

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1896.

No. 392

90.

GUADALUPE THOMPSON, ADMINISTRATRIX OF THE
ESTATE OF ALFRED BENT, DECEASED; GEORGE
THOMPSON, HER HUSBAND; CHARLES BENT, JULIAN
BENT, AND ALBERTO SILAS BENT, APPELLANTS,

vs.

THE MAXWELL LAND GRANT AND RAILWAY COMPANY
AND LUZ B. MAXWELL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW
MEXICO.

FILED DECEMBER 6, 1896.

(16,109.)

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(16,109.)

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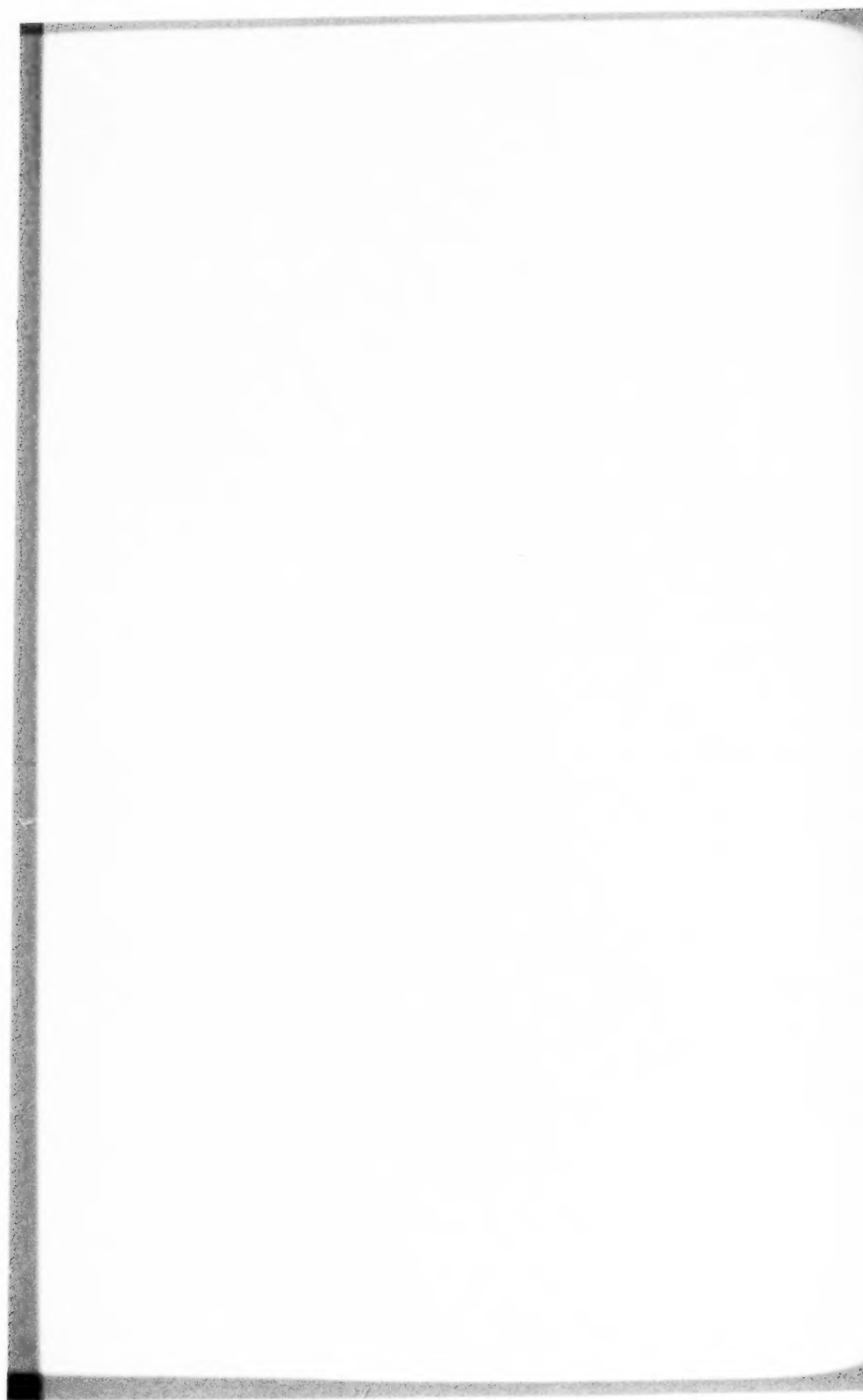
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1 Be it remembered that heretofore, to wit, on the nineteenth day of July, 1894, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a certain transcript of record from the district court in and for the county of Colfax, in said Territory; which said transcript is in the words and figures following, to wit:

2 *Transcript of Record.*

Part first.

THE MAXWELL LAND GRANT AND RAILWAY CO. <i>et als.</i> ,	} Chancery.
Appellees,	
<i>vs.</i>	
GUADALUPE THOMPSON, Administratrix, etc., <i>et als.</i> ,	}
Appellants.	

Appeal from the fourth district court, Colfax county.

Pleas in the district court for the first judicial district of the Territory of New Mexico, at a regular term begun and held within and for the county of Colfax at the village of Cimarron, on the twenty-ninth day of August, one thousand eight hundred and seventy-three, on the sixth day of said term, being the
 3 fourth day of September, A. D. 1873, the Hon. Joseph G. Palen, chief justice of the supreme court of said Territory and judge of the first judicial district court thereof, presiding.

THE MAXWELL LAND GRANT AND RAILWAY COMPANY, Lucien B. Maxwell, and Luz B. Maxwell, His Wife,	} 45. Chancery.
<i>vs.</i>	
GUADALUPE THOMPSON, Administratrix of the Estate of Alfred Bent, Deceased; George Thompson, Her Husband, and George Boyles, Guardian <i>ad litem</i> of Charles Bent, Alberto Silas Bent, and Julian Bent.	}

Be it remembered that heretofore, to wit, on the first day of August, A. D. 1870, the said complainants, by their solicitors, filed in the clerk's office of said district court their bill of complaint in this cause; which bill is in the words and figures following, to wit:

TERRITORY OF NEW MEXICO, {
 County of Colfax. }

In the District Court of the First Judicial District, Sitting in the County of Colfax, Territory of New Mexico, for the Trial of Causes Arising under the Laws of the Territory, at the August Term, A. D. 1870.

To the Hon. Joseph G. Palen, chief justice of the supreme court of said Territory and judge of the first judicial district court thereof, in chancery sitting:

Your petitioners, Lucien B. Maxwell, of Cimarron, in the county

- of Colfax and Territory of New Mexico aforesaid, and Luz B. Maxwell, his wife, and the Maxwell Land Grant and Railway Company, a corporation duly created, organized, and established under the laws of said Territory of New Mexico and having an office and place of business at said Cimarron, bring this their bill of complaint against Guadalupe Thompson, late Guadalupe Bent, administratrix of the estate of Alfred Bent, and her husband, George Thompson, Charles Bent, Juliana Bent, and Alberto Silas Bent, the last three all being minors and all residents of the county of Las Animas, in the Territory of Colorado; and thereupon your orators complain and say that heretofore, to wit, on or about the eleventh day of January, A. D. eighteen hundred and forty-one, the Republic of Mexico, in due form of law, granted to Charles Beaubien — Guadalupe Miranda, citizens of said Republic, a tract of lands, situate in the then province or department of New Mexico, constituting a part of the said Republic, which tract of land was described as follows, namely: Commencing on the east of Red river a mound was erected, from whence following in a direct line in an easterly direction to the first hill another mound was erected at the point thereof and continuing from south to north on the line nearly parallel with Red river; a third mound was erected on the north side of the Chicorica or Chocuaco mesa (table-land); thence turning towards the west and following along the side of said table-land of the Chacuaco to the summit of the mountain where the fourth mound was erected; from thence following along the summit of said main ridge from the north to the south, to the Cuesta del Asha, one hundred varas north of the road from Fernandez to the Laguna Negra, where the fifth mound was erected; from
- 5 thence turning again to the east towards Red river and following along the southern side of the table-lands of the Rayado and those of the Gonzalites, on the eastern point of which the sixth mound was erected; from thence following in a northerly direction to the west side of Red river, opposite the first, where the last and seventh mound was erected, all of which will more fully appear by reference to certified copies of said grant and act of possession herewith filed and made a part of this bill and marked "C" and "D." That the said grant was duly accepted by the said grantees who thereupon immediately entered into possession of the premises, and the said grantees and those holding under them have ever since maintained, and still do maintain, exclusive, quiet and peaceable possession thereof.

That afterwards and on or about the twenty-first day of June, A. D. 1860, the said grant was duly ratified and confirmed by an act of Congress of the United States in pursuance of the provisions in that behalf of the treaty between the United States and Mexico, known as the treaty of Guadalupe Hidalgo. That by sundry conveyances and purchases and by inheritance, on the twenty-ninth day of May, A. D. 1865, the said Lucien B. Maxwell and wife had become and then were the sole owner in fee-simple, and undivided, of the whole of the aforesaid granted premises, with the exception of a few small parcels heretofore sold by them to other persons, who had no inter-

est in the object of this suit, nevertheless subsequent to said last-mentioned date, certain deeds were executed to the said Maxwell in confirmation of purchases previously made by him, and if it should hereafter become necessary the complainants beg leave of the
 6 court to set forth more specifically and in detail the origin of the title of the said Maxwell and wife.

That afterwards, to wit, on or about the 30th day of April, A. D. 1870, the said Lucien B. Maxwell and wife being as aforesaid still seized and pos-essed of the said premises, for a valuable consideration sold and conveyed the premises to the said Maxwell Land Grant and Railway Company by a warranty deed with full covenants, reserving and excepting the home ranch so called, consisting of about one thousand acres of land and certain other small parcels of land and mineral rights; to which said deed, if it shall become necessary, the complainants beg leave to refer, as will appear by reference to a certified copy of said deed made a part of this bill and marked Ex. "E."

The complain-*ts* further say that heretofore, to wit, on or about the 12th day of September, 1859, Alfred Bent, then in full life but since deceased, Estefana Hicklin and Alexander Hicklin, her husband, Teresina Bent, alias Teresa T. Bent, and Aloys Scheurick, her husband, and also by her next friend, Ceran St. Vrain, commenced a suit in the district court of the said Territory of New Mexico, for the county of Taos, in the first judicial district, against the said Lucien B. Maxwell and Luz Beaubien Maxwell, his wife, and sundry other persons who have now no interest in the object of this suit, and who are therefore not made parties thereto.

The complainants further say that diligent search has been made for the pleadings in the said suit of Alfred Bent and others, but the said pleadings cannot be found among the records of this court or elsewhere, and the complainants therefore aver that the said pleadings are lost or destroyed, but the complainants are informed and believe, and therefore aver, that in the petition in the said suit of Alfred Bent and others, it was in substance alleged that by a parole agreement made between one Charles Bent, the father of the said Alfred Bent, Estefana Hicklin, *née* Estefana Bent, Teresina Scheurick, *née* Teresina Bent, and the said original grantees, Charles Beaubien and Guadalupe Miranda, the said
 7 Charles Bent became and was equitably entitled to one undivided fourth part of the aforesaid granted premises, and that to the extent of such undivided one-fourth part the said Beaubien and Miranda and those holding under them were trustees of the legal title for the said Charles Bent in his lifetime; that no conveyance of the said undivided interest aforesaid had been made to the said Charles Bent in his lifetime, that the said Charles Bent died intestate, and that the said Alfred Bent, Estefana Hicklin and Teresina Scheurick were the children and only heirs of the said Charles Bent, and that the defendants to the extent that they, severally and respectively, held legal title to the premises or parts thereof, continued to hold such legal title in trust for said alleged children of Charles Bent to the extent respectively of one undivided fourth part, and among other

things, the said complainants prayed for a partition of the premises upon the footing of the claim as set forth in said petition.

That the parties respectively appeared in said cause by their respective counsel and the defendants filed their answer, which the complainants are informed and believe was in substance a denial of the equity set up in the plaintiff's petition. The said cause came by legal continuances to the term of said court, held within and for the county of Taos, on the 29th day of May, 1865, when and where the respective parties again appeared and such proceedings were had, that an interlocutory decree was made and entered, in and by which it was in substance decreed and declared that in the lifetime of the said Charles Bent, the said Beaubien and Miranda held the legal title to one undivided fourth part of the said estate in trust for the said Charles Bent, who in equity was entitled to the said undivided one-fourth part thereof, that the said children of Charles Bent, upon the decease of their said father, had legal capacity to succeed to, and did succeed to the said equitable interest of their father in the premises as his only heirs-at-law.

And it was also adjudged and decreed that a partition should be made between the said children of Charles Bent and said Lucien B. Maxwell, who had succeeded to the interest and estate of the said Miranda, as also certain daughters and a son of the said Beaubien mentioned in the said decree, and the said Alfred, Teresina, and Estefana, children of the said Charles Bent, and in and by the said decree commissioners were appointed and directions given for making said partition, which said decree the complainants pray may be taken to be a part of this petition in the same manner as if the same were herein set forth at length, a copy of which is herewith filed and marked Exhibit "A."

The complainants further say that afterwards in the lifetime of the said Alfred Bent, to wit, on or about the — day of —, plaintiffs then all being in full life and all *sui juris*, and having full legal capacity to contract, and before any steps had been taken, to carry the said decree into execution, an agreement by way of a compromise of what was still regarded as a doubtful and uncertain claim on the part of the said complainants, was entered into by and between the said Lucien B. Maxwell and each of the said plaintiffs, whereby in consideration of the sum of eighteen thousand dollars to be paid by the said Maxwell to the said plaintiffs, they, the said plaintiffs and each of them agreed with the said Maxwell to release and discharge the premises and every part thereof, and also the said Maxwell and wife from the said trust or equitable claim, and in confirmation of such release and discharge to convey to him, the said Maxwell, all their right, title, and interest respectively, in and to the said premises; the sole object and purpose of the said agreement being to confirm the title to the said Maxwell and wife to the premises, and to release and discharge the same from the said trust or equitable claim set up by the plaintiffs.

The complainants further say that before the performance and full execution of the said agreement could be had, to

wit: on or about the — day of —, the said Alfred Bent, one of the plaintiffs, deceased at Taos, in said Territory, leaving three minor children and heirs, namely, the said Charles Bent, Julian Bent and Alberto Silas Bent.

That afterwards, at the term of the said court held in and for the county of Taos, on the 9th day of April, 1866, such proceedings were had in the said cause that the death of the said Alfred Bent was suggested upon the record and thereupon his said minor children and heirs, Charles, Julian and Alberto Silas, were made parties plaintiff, and their mother, Guadalupe Bent, widow of said Alfred Bent, was then and there appointed guardian *ad litem* for said minors respectively.

Thereupon such other proceedings were had and held that it was made to appear to the said court that the aforesaid agreement between the plaintiffs and Lucien B. Maxwell for the extinguishment of the said claim or trust had been made, and that in consequence thereof the said interlocutory decree for a partition had not been carried into effect and executed, and thereupon at the request and with the consent of the solicitors for the respective parties, plaintiff and defendant, it was further ordered by the said court that the interlocutory decree aforesaid declaring the said trust and equity in favor of the plaintiffs and directing a partition, and all orders made under and by virtue of the said decree should be and they were set aside. And it was then, upon like request and agreement, further ordered and decreed that the said Lucien B. Maxwell should pay to the plaintiffs in said suit the said sum of eighteen thousand dollars to be divided among them as follows, namely: To the said Scheurick and Teresina Bent, his wife, one-third thereof; to the said Hicklin and Estefana Bent, his wife, one-third thereof, and to and among 10 the said children of Alfred Bent, the remaining third part equally, the share of each to be paid into the hands of their said mother and guardian *ad litem*. And upon like request and agreement, it was then and there further ordered and decreed by the court, that the said Alexander Hicklin and Estefana Bent his wife, and the said Aloys Schuerick and Teresina Bent, his wife, and the said Guadalupe Bent, guardian *ad litem* as aforesaid in the name of said Charles, Julian and Alberto Silas Bent, should within 10 days from date of said decree severally execute and deliver to the said Lucian B. Maxwell good and sufficient conveyances of all their right, title, interest, etc., in the premises.

The complainants further say that afterwards, to wit, on or about the 3rd day of May, 1866, the said Lucien B. Maxwell paid the said sum of eighteen thousand dollars to the persons and in the proportions as directed by the said decree, except that the sum of six thousand dollars was paid to the said Guadalupe Bent, as administratrix of the said estate of the said Alfred Bent, and not as guardian *ad litem* for said infants, and on the 3rd day of May, 1866, the said Scheurick and wife, executed and delivered to the said Maxwell a conveyance of one-third interest in the premises, and on the 31st day of May the said Hicklin and wife executed and delivered to the

said Maxwell a conveyance of all their right, title, and interest in the premises, and on the — day of — the said Guadalupe Bent undertook to convey to the said Maxwell all the right, title and interest in the premises of the said minor children of Alfred Bent. To this decree and deeds, the plaintiffs also beg leave to refer from time to time as it shall become necessary, in the same manner as if the same were herein set out at length, certified copies—which are herewith filed and marked "B," "F," "G," and "H" and prayed to be taken as a part of this bill.

11 The complainants further say, that by the said agreement made between the said Lucien B. Maxwell and the plaintiffs in the suit aforesaid, in the lifetime of said Alfred Bent, one of the said plaintiffs, all of the equitable right, title and interest, if any, of the said Charles Bent, and of the said plaintiffs derived from the said Charles Bent, became and was transferred and vested in the said Lucien B. Maxwell, and extinguished, and the equitable right, title and interest, if any, of the said plaintiffs, and each of them, and all trusts, if any, existing in their favor, in the premises was, and is wholly extinguished and terminated, and the premises and every part thereof, and all persons holding the same or any part of parcel thereof became and were and are free and discharged of and from the said trust, or equitable interest or claim, if any, of the said plaintiffs in the premises.

The complainants further say that the said agreement was fully carried out in good faith by the said surviving plaintiffs, Teresina Bent and Estefana Bent, and their husbands, respectively, by the execution and delivery to the said Maxwell of the conveyance hereinbefore referred to, and so far as the same could lawfully be done under and by virtue of the said order and the conveyance of Guadalupe Bent in behalf of the said minor children of Alfred Bent, deceased, under and in pursuance of the same, the said trust or equitable interest or claim, if any, of the said Alfred Bent and his said minor children and heirs, was wholly terminated and extinguished, but the complainants say that they are advised that by reason of certain errors and irregularities in the proceedings in the aforesaid —, it is doubtful in law whether as against the said minor children and heirs of said Alfred Bent, it sufficiently appears that they have no equitable or other interest in the said premises, and that such

12 doubt creates a cloud upon the title to the premises which can only be removed by the interposition and decree of this court.

The complainants further say that among the errors and irregularities in the proceedings in said suit and which create a cloud upon the title to the premises are, as they are advised, the following, namely:

It does not appear (as the fact is) that an agreement for the sale of the equitable interest of the said Alfred Bent in the premises, was made between the said Lucien B. Maxwell and the said Alfred Bent, in the lifetime of the latter. That the said interlocutory decree should not have been set aside, but the same should have been modified.

That the money paid by the said Lucien B. Maxwell for the supposed equitable interest of the said Alfred Bent, and to extinguish the same should have been directed to be paid to the personal representatives of the said Alfred Bent, and not to the guardian *ad litem* of his minor children and heirs, and that upon such payment being made, the court should by a proper decree, have decreed and adjudged the said trust or equitable claim or interest to be extinguished, and that the premises and every part and parcel thereof should be held free and discharged of said trust, and that the court had no jurisdiction to order and decree a conveyance by the guardian *ad litem* of the said infants in the name of the said infants of any interest which they might appear to have in the premises.

The complainants further say that in fact the share of the said Alfred Bent in the said eighteen thousand dollars, namely, six thousand, has passed into the hands of the personal representatives of the said Alfred Bent, namely, the said Guadalupe Thompson, late Guadalupe Bent, and widow of the said Alfred Bent, but now the wife of said George Thompson, and Thomas Boggs, who on the —
 13 day of — duly was appointed administratrix and administrator of the said Alfred Bent by —.

The complainants further state that the said agreement between the said Lucien B. Maxwell and the said Alfred Bent, in his lifetime, Teresina Bent and Estefana Bent, and their respective husbands, has been fully performed by the said Lucien B. Maxwell, and the complainants are therefore entitled to hold the premises free and discharged from the said trust as well as against the heirs of the said Alfred Bent, deceased, as against all other persons.

In tender consideration of the premises, and inasmuch as said complainants are without complete and adequate remedy by the strict rules of the common law, they refer all these matters and things to your honor's court in chancery, where the same are properly cognizable and relievable, and ask that said defendants, and each of them, may be required, to the best of their information, knowledge, and belief, full, true, and perfect answers make to all and singular the allegations in this petition contained, and the premises being found for complainants, they pray.

1st. That your honor will order, adjudge and decree that the trust aforesaid be terminated and extinguished as against the defendants; that the defendants have no interest in or title to the premises, equitable or otherwise, and that the plaintiffs respectively shall hold the premises according to their respective interest therein, free and discharged of all trusts in favor of the defendants, and any and all persons claiming under them, and grant to the complainants such other and further relief as may be just and equitable.

May it please your honor to grant unto complainants *to writ* of subpoena, to be directed to Guadalupe Thompson, administratrix of Alfred Bent, deceased, and George Thompson, Julian Bent,

Charles Bent, and Alberto Silas Bent, commanding them and
 14 each of them, on a certain day, and under a certain penalty therein inserted, to appear at the next regular term of the

court for the county of Colfax, then and there to answer the premises and abide the order and decree of the court.

W. W. McFARLAND,
S. B. ELKINS,

Sols. for Comps.

And afterwards, to wit, on the 2nd day of September, A. D. 1870, the said complainants filed in the clerk's office of said district court, the following exhibit, marked "C," and referred to in the foregoing bill, which exhibit is in the words and figures following, to wit:

Seal third.

(Seal.)

Two rials.

For the years one thousand eight hundred and forty and one thousand eight hundred and forty-one.

MOST EXCELLENT SIR: The undersigned Mexican citizens and residents of this place, in the most approved manner required by law, state:

That of all the departments in the Republic, with the exception of the Californias, New Mexico is one of the most backward in intelligence, industry, manufactories, etc., and surely few others present the natural advantages to be found therein. Not only on account of its abundance of water, forests, woods, fertility of the soil, containing within its bosom rich and precious metals, which up to this time are useless for the want of enterprising men, who will convert them to the advantage of other men, all of which productions of nature are susceptible of being used for the benefit of society in the department as well as in the entire Republic, if they were in the hands of individuals who would work and improve them. An old and true adage says, "What is the business of all is the business of none," therefore, while the fertile lands in New Mexico, where, without contradiction, nature has proven herself most generous, are not reduced to private property, where it will be improved, it will be of no benefit to the department which abounds in idle people, who for want of occupation are a burden to the industrious portion of society, while with their labor they could contribute to its welfare, and honestly comply with their obligations. Idleness, the mother of vice, is the cause of the increase of crimes which are daily being committed, notwithstanding the severity of the laws and their rigid execution; the towns are overrun with thieves and murderers, who by this means alone desire to procure their subsistence. We think it a difficult task to reform the present generation, accustomed to idleness and hardened in vice. But the rising one, receiving new impressions, will easily be guided by the principles of a pure morality. The welfare of a nation consists in the possession of lands which produce all the necessities of life without requiring those of other nations, and it cannot be denied that New Mexico possesses this great advantage, and only requires industrious hands to make it a happy residence. This is the age of progress and the march of intellect, and they are so rapid that we may expect, at a

day not far distant, that they will reach even us. Under the above conviction, we both request Your Excellency to be pleased to grant us a tract of lands for the purpose of improving it without injury to any third party, and raising sugar-beets, which we believe will grow well and produce an abundant crop, and in time to establish manufactories of cotton and wool, and raising stock of every description. The tract of land we petition for to be divided equally between us, commences below the junction of the Rayado river with the Colorado, and in a direct line towards the east to the first hills, and from there running parallel with said river Colorado
 16 in a northerly direction to opposite the point of the "Una de Gato," following the same river along the same hills to continue to the east of said "Una de Gato" river to the summit of the table land (mesa), from thence turning northwest to follow along said summit until it reaches the top of the mountain, which divides the waters of the rivers running towards the east from those running west, and from thence following the line of said mountain in a southwardly direction until it intersects the first hill south of the Rayado river, and following the summit of said hill towards the east, to the place of beginning. For the reasons above expressed, and being the heads of large families, we humbly pray Your Excellency to take our joint petition under consideration, and be pleased to grant us the land we petition for, by doing which we will receive grace and justice. We swear it is not done in malice; we protect good faith and whatever may be necessary, etc.

Santa Fé, January 8th, 1841.

(Signed)

GUADALUPE MIRANDA.
CARLOS BEAUBIEN.

SANTA FÉ, *January 11, 1841.*

In view of the request of the petitioners, and what they state therein being apparent, this government, in *in* conformity with law has seen proper to grant and donate to the individuals subscribed the land therein expressed in order that they may make the proper use of it which the law allows.

(Signed)

ARMIJO.

To Don Cornelio Vigil, justice of the peace :

The undersigned Mexican citizens and residents of this department appear before you in the most proper manner provided by law, and state that having received from the government of the department a grant to the public land set forth in the accompanying plat, as will be seen by the superior decree attached
 17 to the margin, and having no title of possession which will secure our legal property and prevent any one from disturbing us in it, we request you to consider us as having presented ourselves and without delay execute the same, to be used according to our rights.

We therefore request you to comply with our request, justice being what we impetrate.

We swear not to act with malice and in whatever may be necessary, etc.

Taos, February 12, 1843.

(Signed)

(Signed)

GUADALUPE MIRANDA.

CARLOS BEAUBIEN.

Taos, February 13, 1843.

Considered as presented and received as far as the law allows, I, the present justice, with those in my attendance and instrumental, will proceed to the place mentioned in the accompanying documents and let the possession solicited be given to the petitioners in order that it may be held by them, their heirs and successors, according to law, Citizen Cornelio Vigil, justice of the peace of the first demarcation of Taos, so provided, ordered, and signed with those in attendance, I certify.

(Signed)

CORNELIO VIGIL.

Attending:

(Signed)

BUENAVA VALDEZ.

Attending:

(Signed)

JUAN MANUEL LUCERO.

In the town of Taos, on the twenty-second day of February, one thousand eight hundred and forty-three, I, Citizen Cornelio Vigil, justice of the peace of this precinct, by virtue of what has been ordered in the foregoing decree, proceeded to the land referred to by Don Guadalupe Miranda and Don Carlos Beaubien in the foregoing petition and being there with those in my attendance and instrumental witnesses which for that purpose were appointed, we proceeded to erect the mounds according as the land is described in the accompanying petition, and which corresponds with the plat to which I attach my rubric; and commencing on the east of Red river, a mound was erected from whence following in a direct line in an easterly direction to the first hills, another mound was erected at the point thereof and continuing from south to north on a line nearly parallel with Red river, a third mound was erected on the north side of the Chico Rico or Chacuaco mesa (table-land), thence turning toward the west and following along the side of the said table-land of the Chacuaco to the summit of the mountain where the fourth mound was erected; from thence following along the summit of said main ridge from north to south to the Cuesta del Osha one hundred varas north of the road from Fernandez to the Laguna Negra, where the fifth mound was erected; from thence turning again to the east towards Red river and following along the southern side of the table-lands of the Rayado and those of Gonzalitos, on the eastern point of which the sixth mound was erected; from thence following in a northerly direction, I again reached Red river, on its western side, where the seventh and last mound was erected opposite to the first, which was erected on the eastern side, and being registered.

I took them by the hand, walked with them, caused them to throw earth, pull up weeds and show other evidences of possession with

which the act was concluded the boundaries being determined without any claim whatsoever to the injury of any third party, as I, the aforesaid justice in the name of the sovereignty of the nation (which may God preserve,) I gave the aforesaid Don G. Miranda and
 19 Don C. Beaubien, the perfect and personal possession asked for by them in order that it may answer as a sufficient title for them, their children and successors, in which I will protect and defend them, and I will direct that they be not deprived of said land without having been first heard and judgment rendered according to law. In testimony whereof I signed, with those in my attendance and instrumental witnesses, who were citizens Jose Maria Valdez, Pablo Jaramillo and Pedro Valdez (who were present) and residents of this precinct.

To which I certify.

(Signed)

CORNELIO VIGIL.

Instrumental:

(Signed) JOSE MARIA VALDEZ.

Instrumental:

(Signed) PABLO JARAMILLO.

Instrumental:

(Signed) PEDRO ANTONIO VALDEZ.

Attending:

(Signed) BUENAVA VALDEZ.

Attending:

(Signed) JUAN MANUEL LUCERO.

Seal fourth.

(Seal.)

Two reals.

For the year- one thousand eight hundred and forty-four and one thousand eight hundred and forty-five.

MOST EXCELLENT SIR: Citizen Charles Beaubien, a native of Canada, but naturalized and resident of this department in the jurisdiction of San Fernandez de Taos, for himself and in the name of his associate, D. Guadalupe Miranda, native of the Mexican Republic, appears before you with due respect, and in the most approved manner provided by law and convenient to him, and
 20 states that being about to undertake the cultivation of the lands which by virtue of a petition which we presented to the local government of this department on the 8th day of January, 1841, asking that the public lands at the place of "El Renion del Rio Colorado" be granted to us, including the Rayado and Ponie rivers, &c., and as there was no injury done to any third party, our petition was acceded to, as may be seen by the decree issued on the 11th day of January in the same year, by the most excellent governor and commandant, General Don Manuel Armijo, which is contained on the margin of our deeds. I have been prevented from carrying those projects into effect, on account of the decree of the 27th February last, issued by Your Excellency, and which through your secretary was communicated to the prefecture of the first dis-

trict, in order that paying attention to the petition addressed to Your Excellency by the curate Martinez and others in reference to a grant of lands made to the citizen of the United States, Mr. Charles Bent, and that all use made of them be suspended, I have to state to Your Excellency in defence of those lands which are in our possession according to the titles thereto which are in our possession, that the petition addressed to Your Excellency by the curate Martinez and others, is founded upon an erroneous principle, as the aforesaid Mr. Bent has not acquired any right to said lands, it is therefore very strange that the curate Martinez and others pretend to involve our property, as it has no connection with that of that individual; therefore it is to be presumed, or the necessary consequence must be, that the curate Martinez and his associates do not know to whom these lands belong, nor their intent, as he states that a large number of leagues were granted, when the grant does not exceed fifteen or eighteen, which will be seen by the accompanying judicial certificates.

21 They also state in the petition referred to, as I am informed, that those lands are recognized as commons where the stock of the towns is pastured; here is another error, when the same curate states that it is the place where buffaloes are hunted, very evidently making a palpable contradiction; he also states in his celebrated petition to the supreme government praying that the natives be not allowed to hunt that most abundant game for fear that the race would be extinguished on account of their unnecessary butchery at improper seasons, and it has removed so far that it takes several months to reach it, and being at so great a distance, can it be supposed that traveling at a moderate gait it can be reached in one or two days, therefore I believe their claim to the lands granted or assigned to Mr. Charles Bent is a fraudulent one, and as the claim is made against that individual, I do not see that we should be deprived of its productions our object being to place it under cultivation, and not only does the suspension of labor on those lands injure us, for the reason of having incurred heavy expenses, but also a considerable number of families and industrious men who are willing and ready to settle upon those lands, and to whom we have given lands, a list of which individuals I accompany in order that Your Excellency seeing their number may determine what may be proper, and even if it were beneficial to the entire department that

(Torn.)

In order that Your Excellency may determine if it is just or not I accompany the documents which attest our title, requesting that they be returned.

Therefore I pray Your Excellency that we be allowed to remain in the free use of our property, by which I will receive grace and justice, which I impetrate I swear it is not done in malice, etc.

Santa Fé, April 13, 1844.

(Signed)

CHARLES BEAUBIEN.

22

SANTA FÉ, April 13, 1944.

This office collecting all the proceedings in reference to the matter will refer these proceedings to the most excellent department assembly in order that it may give its opinion.

(Signed)

SENA.

(Signed)

JOSE Z ZUBIA.

MOST EXCELLENT SIR: In session of today this most excellent assembly in consideration of Your Excellency's decree has resolved upon the following opinion:

This most excellent assembly being informed of the petition of Mr. Charles Beaubien in which he states for himself and in the name of his associate, Miranda, that in consequence of an order issued by the most excellent governor, Don Mariano Chares, the free use and benefit of their possession was forbidden them, and that this was done on account of a petition made by the priest Martinez and the chief of the pueblo of Taos, falsely stating that this land was granted to Mr. Charles Bent and other foreigners, the aforesaid statement of the priest Martinez and associates being untrue, this assembly believing that the order of suspension having been based upon that false statement, and in view of the documents which accredit the legitimate possession of Miranda and Beaubien and their desires that their colony shall increase in prosperity and industry, for which purpose he has presented a long list of persons to whom they have offered land for cultivation, and who shall enjoy the same rights as the owners of the lands; that the government having dictated the step for the sole object of ascertaining the truth; that the truth having been ascertained and the right of the party established, is of the opinion that the aforesaid superior decree be declared null

23 and void and that Miranda and Beaubien be protected in their property as having been asked for and obtained according to law. This is our opinion, but Your Excellency may determine what you may deem most proper.

(Signed)

FELIPE SENA.

(Signed)

AUGUSTINE DURAN.

(Signed)

ANTONIO SENA.

(Signed) DONACIANO VIGIL, *Secretary.*

SANTA FÉ, April 18, 1844.

In view of the foregoing opinion of the most excellent assembly of the justice of the cause of the petitioner, for himself and his associate Miranda concerning the grant made to them by Governor General Manuel Armijo, and illegal petition of the curate Antonio Jose Martinez and the associates, in which they state that the land of the Rincon del Colorado were granted to foreigners the order of the 27th February issued by this government forbidding the free use of the land in question, is repealed, and Messrs. Beaubien and Miranda are fully authorized to establish their colony according to the offers made by them when they petitioned for the land which has been granted to them. Let this be transmitted to the prefect, in order that he may issue his orders in accordance with this decree.

In the absence of the secretary and by direction of H. E., the governor.

(Signed)

DONACIANO VIGIL,

Acting Secretary.

(Signed) SENA.

RIO ARRIBA, April 18, 1844.

Let the foregoing proceeding in which is to be found the superior decree of H. E., the governor of this department, dated the 18 inst., be transmitted to the party or parties interested in the land referred to, showing the documents to the justice nearest to the lands, 24 who is the proper one, in order that he may give ample authority to the petitioners to occupy the lands which has been granted to them. The prefect, in compliance with said decree, informs the justices that they are forbidden from hindering the parties interested in said lands.

(Signed)

ARCHULETA.

The undersigned certify, as far as the laws allows and to the best of our knowledge and belief, that there is no objection made to the settlement of the place called Red river, which embraces the Rayado and Ponie rivers, &c., it being well known and certain that it has never been used as pasture grounds for cattle, and that for a long time it has not been used for hunting buffalo; on the contrary the settlement of that place would be a benefit to the interior settlements, affording them protection from the enemy in that direction, occupying a great number of idlers who have no occupation, in the cultivation of the soil, and relieving this vicinity from a large number of persons who crowd us. The endless difficulties we experience every year on account of the scarcity of water for irrigation would be avoided; but the greatest advantage to the entire department would be that in case of a war with the Navajo Indians the stock could be pastured during the entire year in the vicinity of these new settlements, and be protected by them. It is also certain that from here to the Arkansas river, there are not more than six or seven days' journey, traveling with packs at a moderate pace, from there to Rayado one and one-half days' journey from the head of Red river to the Arkansas from three to four days.

In order that this certificate may have due force and effect, we pray the justice of the peace of this precinct to authorize this certificate and attach his judicial decree thereto at Taos, the 14th day of

March, 1844.

25 (Signed)

(Signed)

(Signed)

(Signed)

(Signed)

(Signed)

(Signed)

(Signed)

(Signed)

(Signed)

(Signed)

PABLO LUCERO.

BUENAVA VALDEZ.

BLAS TRUJILLO.

GREGORIO LUCERO.

JOSE MANUEL SANCHEZ.

JUAN MANUEL LUCERO.

JOSE MARIA VALDEZ.

JOSE IGNACIO LUNA.

TOMAS ROMERO.

JUAN BENITO VALDEZ.

JOSE GREGORIO MARTINEZ.

It passed before me and at the request of the subscribers thereto, by the authority which is conferred upon me by law, I authorize the present certificate, the contents thereof being true and in order that it may appear, I sign with those in my attendance, to which I certify in Taos, on the 18th March, 1844.

(Signed)

TOMAS LUCERO.

Attending:

(Signed)

RAFAEL CORDOVA.

Attending:

(Signed)

JUAN JOSE GONZALES.

Duplicate of the above certificate on the 16th March, 1844, signed by Miguel Antonio Vigil, Antonio Jose Mondragon, Miguel Mascarenas, Manuel Fernandez, Rinaldo Vargas, Jose Ignacio Gonzales, Jose Manuel Martinez, Pablo Vargas, Juan de Jesus Medina, Buenava Lobato.

At the request of the above signed personally present, I authorize the present certificate and I know the contents thereof to be true, and in order that it may so appear, I signed with those in my attendance to which I certify.

26

S. FERNANDO DE TAOS.

March 16, 1844.

(Signed) JUAN ANTONIO LOBATO.

Attending:

(Signed) JUAN DE LOS REYES ROMERO.

Attending:

(Signed) JOSE MATIS CURIAS.

(Endorsement:) File 48. Recorded in volume 1 of "Land Claim Record," in surveyor general's office of New Mexico, on pages 426, 427, 428, 429, 430, 431, 432, 433, 434 and 435. Dav. J. Miller, translator.

U. S. SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, TERRITORY OF NEW MEXICO, *January 7, 1870.*

I, T. Rush Spencer, the United States surveyor general within and for the Territory of New Mexico, do hereby certify that I have carefully compared the foregoing with the original among the papers on file in this office, constituting the Beaubien and Miranda grant (filed No. 48, reported No. 15) and find the same to be a correct, truthful and complete copy.

In witness whereof I have hereunto set my hand, (there being no official seal attached to this office). Done at Santa Fé, this 7th day of January, 1870.

(Signed)

T. RUSH SPENCER,

U. S. Surveyor General.

EXECUTIVE DEPARTMENT,
TERRITORY OF NEW MEXICO,
SANTA FÉ, *January 8, 1870.*

27

I, H. H. Heath, secretary of the Territory of New Mexico, do hereby certify that T. Rush Spencer, Esquire, who has

signed the foregoing document, is now, and was at the date of signing the same, the United States surveyor general of the Territory of New Mexico, duly commissioned as such; that his above signature is genuine, and that all his acts as such surveyor general are entitled to full faith and credence.

In testimony whereof I have hereunto set my hand and affixed the great seal of the Territory.

Done at Santa Fé this 8th day of January, A. D. 1870.

[SEAL.]

(Signed)

H. H. HEATH,

Secretary Territory New Mexico.

And afterwards, to wit: on the same day and year last aforesaid, the said complainants filed in the clerk's office of said district court the following exhibit, marked "D," which exhibit is in the words and figures following, to wit:

Beaubien and Miranda.

To the Honorable William Pelham, surveyor general of the Territory of New Mexico:

Your petitioners, Charles Beaubien and Guadalupe Miranda, original and present claimants of a certain tract of land hereinafter described, would respectfully state, that heretofore, to wit: in the year of our Lord one thousand eight hundred and forty-one, Manuel Armijo, then governor of said Territory, under the Mexican Republic, by virtue of his authority as such governor, and of the consent and approval of the departmental assembly of said Territory, did grant and concede unto your said petitioners a full and complete right and title to a certain tract of land situated in the county of Taos, in the northeastern part of said Territory, and of which legal possession was judicially given to your petitioners according to the laws and customs of the Mexican Republic, on the twenty-second day of February, A. D. 1843, (see exhibit of grant

28 in this case marked "A"), and bounded and described as follows: Commencing on the east of Red river, a mound was erected, from whence following in a direct line nearly parallel with Red river; a mound was erected on the north side of the Chacuaco mesa (table-land); thence turning towards the west and following along the side of the said table-lands of the Chacuaco to the summit of the mountains where the fourth mound was erected; from thence following along the summit of the main ridge from north to south to the Cuesta del Osho, one hundred varas north of the road, from Fernandez to the Laguna Negra, where the fifth mound was erected; from thence turning again to the east towards Red river and following along the southern side of the table-lands of the Rayado and those of the Gonzalitos on the eastern point of which the sixth mound was erected; from thence following in a northerly direction again to Red river on its western side, where the seventh and last mound was erected opposite to the first, which was erected on the eastern side of said river.

The manner and form in which the possession of said tract was given to your petitioners will fully appear by the documentary evidence herewith filed (marked "D") and prayed to be made a part of this petition.

Your petitioners further state that they have cultivated and improved portions of said land for the last twelve years whereby it has become of great value, and that they are still cultivating and improving the same by cultivation of land and the erection of houses.

That the said tract has never been surveyed, and they cannot therefore furnish any certain estimate of its contents. That a small portion only is fit for cultivation, and the balance, owing to its mountainous character and scarcity of water, being useless for any other purpose than that of pasturage.

29 That they do not know of any person or persons contesting or intending to contest their right or title to the said lands, or any part of them, and your petitioners therefore pray that said grant may be confirmed to them under the laws of the United States, and will ever pray, etc.

(Signed) HOUGHTON, WHEATON & SMITH,
For Petitioners.

(Endorsement :) File 48. Beaubien and Miranda. Claim to the Rayado grant petition. Recorded vol. 1 of "Land Claims Record," in the surveyor general's office of New Mexico, pages 413 and 414.
(Signed) Dav. J. Miller, translator.

U. S. SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, TERRITORY OF NEW MEXICO, *January 7th, 1870.*

I, T. Rush Spencer, the United States surveyor general, within and for the Territory of New Mexico, do hereby certify that I have carefully compared the foregoing with the original among the papers on file in this office, constituting the Beaubien and Miranda grant, (filed No. 48, reported No. 15) and find the same to be a correct, truthful and complete copy.

In witness whereof I have hereunto set my hand (there being no official seal attached to this office). Done at Santa Fé, this 7th day of January, A. D. 1870.

(Signed)

T. RUSH SPENCER,
U. S. Surveyor General.

EXECUTIVE DEPARTMENT,
TERRITORY OF NEW MEXICO,
SANTA FÉ, *January 8, 1870.*

30 I, H. H. Heath, secretary of the Territory of New Mexico, do hereby certify that T. Rush Spencer, Esquire, who has signed the foregoing document, is now, and was at the time of signing the same, the United States surveyor general of the Territory of New Mexico, duly commissioned as such; that his above signature is genuine, and that all his acts as such surveyor general are entitled to full faith and credence.

In testimony whereof I have hereunto set my hand and affixed the great seal of the Territory.

Done at Santa Fé this 8th day of January, A. D. 1870.

[SEAL.]

(Signed)

H. H. HEATH,

Secretary Territory of New Mexico.

(Claim No. 48.)

Charles Beaubien and Guadalupe Miranda.

This case was filed on the 23d February, 1857, and set for trial on the 28th of July.

On the 8th day of January, 1841, Charles Beaubien and Guadalupe Miranda petitioned Manuel Armijo, the civil and military governor of New Mexico, for a grant of land in the now county of Taos, commencing between the junction of the Rayado and Red rivers; from thence in a direct line to the east to the first hills; from thence following the course of Red river in a northerly direction to the junction Una de Gato with Red river; from whence following along said hills to the east of the Una de Gato to the summit of the table-land, mesa; from whence turning northwest, following said summit to the summit of the mountain which separates the waters of the rivers which run towards the east from those which run to the west; from thence following the summit of said mountain in a southerly direction to the first hill east of the Rayado river; from thence following along the brow of said hill to the place of beginning.

On the 11th day of January, 1841, Manuel Armijo, the governor aforesaid, in conformity with the laws, granted to the petitioners to make such use of as they saw proper.

On the 22d day of February, 1843, the parties were placed in possession of the land granted, by Cornelio Vigil, a justice of the peace of the first precinct of Taos, with all the solemnities required by law and custom.

On the 27th of February, 1844, this grant was suspended by a subsequent governor upon complaint made by one Priest Martinez of Taos, for several reasons contained in the statement made by Beaubien on the 13th of April, 1844, to Armijo, who had in the meanwhile been reappointed to the office of civil and military governor of the department.

On the 18th day of April, Armijo referred the statement of Beaubien, as well as the original petition, grant and judicial possession, to the departmental assembly for its action in the premises. This body reversed the order of February 27, and approved the grant made by Armijo in 1841, which is referred to the prefect of the first district by the governor to issue his directions to cause the parties to be reinstated in their possession, which order was issued by the prefect on the 18th of April, 1844. The papers acted upon in this case are the original duly authenticated by the testimony of competent witnesses. The grant having been confirmed by the departmental assembly, and been in the constant occupation of the

grantees from the date of the grant until the present time, as is proven by the testimony of witnesses, it is the opinion of this office that it is a good and valid grant, according to the laws and customs of the government of the Republic of Mexico, and the decisions of the Supreme Court of the United States, as well as the treaty of Guadalupe Hidalgo of the 2nd February, 1848, and is therefore confirmed to Charles Beaubien and Guadalupe Miranda, and is transmitted for the action of Congress in the premises.

32

WM. PELHAM,
Surveyor General.

SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, *September 17th, 1857.*

(Endorsement:) File 48. Surveyor general's decision. Recorded in vol. 1 of "Land Claims Record," in the office of the surveyor general of New Mexico, on pages 438 and 439. Dav. J. Miller, translator.

U. S. SURVEYOR GENERAL'S OFFICE,
SANTA FÉ, TERRITORY OF NEW MEXICO.
SANTA FÉ, *January 7, 1870.*

I, T. Rush Spencer, the United States surveyor general within and for the Territory of New Mexico, do hereby certify that I have carefully compared the foregoing with the original among the papers on file in this office, constituting the Beaubien and Miranda grant (filed No. 48, reported No. 15), and find the same to be a correct, truthful and complete copy.

In witness whereof I have hereunto set my hand (there being no official seal attached to this office). Done at Santa Fé, this 7th day of January, A. D. 1870.

T. RUSH SPENCER,
U. S. Surveyor General.

EXECUTIVE DEPARTMENT,
TERRITORY OF NEW MEXICO,
SANTA FÉ, *January 8, 1870.*

I, H. H. Heath, secretary of the Territory of New Mexico, do hereby certify that T. Rush Spencer, Esq., who has signed the foregoing document, is now and was at the date of signing the same, the
33 United States surveyor general of the Territory of New Mexico, duly commissioned as such; that his above signature is genuine, and that all his acts as such surveyor general are entitled to full faith and credence.

In testimony whereof I have hereunto set my hand and affixed the great seal of the Territory. Done at Santa Fé, this 8th day of January, A. D. 1870.

[SEAL.]

H. H. HEATH,
Secretary Territory of New Mexico.

And afterwards, to wit, on the same day and year last aforesaid, the said complainants filed in the clerk's office of said district court

the following exhibit, marked "E," and referred to in the foregoing bill of complaint, which said exhibit is in the words and figures following, to wit:

This indenture, made the thirtieth day of April, in the year of our Lord, one thousand eight hundred and seventy, between Lucien B. Maxwell, of Cimarron, in the county of Colfax, Territory of New Mexico, and Luz B. Maxwell, *née* Beaubien, his wife, parties of the first part, and the Maxwell Land Grant and Railway Company, a corporation duly created and organized under the laws of the Territory of New Mexico, party of the second part, witnesseth:

That the said parties of the first part, for and in consideration of the sum of one million, three hundred and fifty thousand dollars, lawful money of the United States of America, to them in hand paid by the said party of the second part, at or before the ensembling and delivery of these presents, the receipt whereof is hereby acknowledged, and the said party of the second part forever released and discharged from the same by these presents and other good and valuable considerations have granted, bargained, sold, aliened, remised, released, conveyed and confirmed, and by these presents do

grant, bargain, sell, alien, remise, release, convey and confirm unto the said party of the second part, its successors and assigns forever, all that certain tract or estate of land, with the mines or minerals of every sort thereon, and therein, and the buildings thereon erected, situate partly in the said county of Colfax, Territory of New Mexico, and partly in the county of Las Animas, in the Territory of Colorado, and heretofore known as the Beaubien and Miranda grant, but latterly known as the Maxwell estate, containing about two millions of acres of land, be the same more or less, for a more particular description thereof reference is had to the original grant from the government of Mexico to the said Beaubien and Miranda, to the act of Congress of the United States, passed in the year one thousand eight hundred and sixty, confirming the said grant, as grant No. 15, Statutes at Large, volume 12, page 71, and the official document referred to in the said act, and to the official survey, now in course of execution under the direction of the United States Government, deputy surveyor W. W. Griffin; reserving, however, from the said tract, the home ranch of cultivated land with the buildings thereon, (except the mill hereinafter referred to) supposed to contain about one thousand acres more or less; and also reserving an undivided one-half interest in the Montezuma mill, so called, being a quartz mill of thirty stamps, with its appurtenances. Excepting from this reservation of the said home ranch, and hereby conveying to the party of the second part the water power thereon, and the flouring mill thereon erected, and the land — which the said mill is built, together with so much of the land around adjoining the said mill and water power as may be necessary for the convenient and full and free use and enjoyment of the same, together with free and full right of way in any direction and at all times forever, to and from said water power and mill, over and across the said home ranch, to the said party of the second part,

35 its successors and assigns, and their officers, agents, and servants. Also, excepting from the operation of this conveyance such tracts of land, part of the said estate, hereby warranted not to exceed in the aggregate fifteen thousand acres, to the parties of the first part, have heretofore sold and conveyed by deed duly recorded on or prior to the twenty-fifth day of January, one thousand eight hundred and seventy. And also, two certain lots of land, one heretofore sold by the parties of the first part to one Peter Joseph, and one heretofore sold to one Valdez, conveyances to which two parcels it is supposed have not as yet been recorded, but which the parties of the first part hereby covenant to have forthwith duly recorded. Also, excepting the following mining interest, namely: one-half the Montezuma quartz lode so called, the said half being fifteen hundred feet by one hundred feet; one undivided sixth part of the Aztec lode, so called; eight discoveries of quartz lodes, each being fifteen hundred by one hundred feet, and the premises are also subject to six leases of placer claims, each being three hundred by three hundred feet; also, excepting twelve lots in Elizabethtown, the purchase-money for which the same have been sold, is, however, to be paid to the party of the second part. Excepting, also, about six lots of land in Cimarron City, deeds for which have been recorded since January, one thousand eight hundred and seventy; together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining. And the reversion and reversions, remainder and remainders, rents, issues and profits thereof. And, also, all the estate, right, title, interest, dower, right of dower, property, possession, claim and demand whatsoever, as well in law as in equity of the said parties of the first part of, in, and to the same and every part and parcel thereof with the appurtenances.

36 To have and to hold the above granted, bargained and described premises with the appurtenances unto the said party of the second part, its successors and assigns, to its and their own proper use, benefit and behoof forever.

And the said parties of the first part, for themselves, their heirs, executors and administrators do covenant, grant and agree to and with the said party of the second part, its successors and assigns, that the said parties of the first part at the time of the sealing and delivery of these presents, are lawfully seized in their own right of a good, absolute and indefeasible estate of inheritance in fee-simple, of and in all and singular the above granted, bargained and described premises, with the appurtenances; and have good right, full power and lawful authority to grant, bargain, sell and convey the same in manner and form aforesaid. And that the said party of the second part, its successors and assigns shall, and may at all times hereafter, peaceably and quietly have, hold, use and occupy, possess and enjoy the above-granted premises and every part and parcel thereof, with the appurtenances, without any let, suit, trouble, molestation, eviction or disturbance of the said parties of the first part,

their heirs or assigns or any other person or persons lawfully claiming or to claim the same.

And that the same now are free, clear, discharged and unincumbered of and from all former and other grants, titles, charges, estates, judgments, taxes, assessments and incumbrances of whatever nature or kind soever. And, also, that the said parties of the first part and their heirs and ail and every other person or persons whomsoever, lawfully or equitably deriving any estate, right, title or interest of, in or to the herein-granted premises by from under or in trust for them, shall and will at any time or times thereafter upon the reasonable request, and at the proper costs and charges in the law, of the said party of the second part, its successors and assigns make,

37 do and execute, or cause or procure to be made, done and executed all and every such further and other lawful and reasonable acts, conveyances, and assurances in the law for the better and more effectually vesting and confirming the premises hereby intended to be granted, in and to the said party of the second part, its successors and assigns forever, as by the said party of the second part, its successors or assigns, or its or their counsel, learned in the law shall be reasonably devised, advise- or required.

And the said parties of the first part and their heirs, the above described, are hereby granted and released premises and every part or parcel thereof, with the appurtenances, unto the said party of the second part, its successors and assigns against the said parties of the first part and their heirs and against all and every person or persons whomsoever, lawfully claiming or to claim the same, and will warrant, and by these presents forever defend.

In witness whereof the said parties of the first part have hereunto set their hands and seals, the day and year first above written.

L. B. MAXWELL. [SEAL.]

LUZ B. MAXWELL. [SEAL.]

Scaled and delivered in presence of—the words “million three hundred and fifty thousands,” on 1st page hereof, being interlined before execution—as to Lucien B. Maxwell:

(Signed) NATHANIEL GILL.

(Signed) J. B. CHAFEE, witness for Luz B. Waxwell.

(Signed) G. M. CHILCOTT.

STATE OF NEW YORK, }
City and County of New York, } 88:

Be it remembered that on this sixth day of July, A. D. one thousand eight hundred and seventy, before me, Nathaniel Gilt, a commissioner for the Territory of New Mexico in New York,

38 duly commissioned and sworn, personally appeared Lucien B. Maxwell, to me personally known to be one of the persons described in and who executed the foregoing instrument of writing as party thereto, and acknowledged that he executed the same as his free and voluntary act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this sixth day of July, A. D. 1870, at the city of New York.

[SEAL.]

(Signed)

NATHANIEL GILL,

Commissioner for New Mexico in New York.

TERRITORY OF NEW MEXICO, }
County of Colfax, } ss:

Be it remembered that on this the 23rd day of July, A. D. 1870, before me, John Lee, clerk of the probate court for said county, Territory aforesaid, personally appeared Luz B. Maxwell, to me personally known to be one of the person-described in, and who executed the foregoing instrument of writing, as party thereto, and acknowledged that she executed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned; and she, the said Luz B. Maxwell, wife of the said Lucien B. Maxwell, having been informed by me of the contents of said instrument, acknowledged on an examination, separate and apart from her said husband, that she had executed the same free from any compulsion, or undue or illicit influence of her said husband, and that she is still satisfied therewith.

In testimony whereof I have hereunto set my hand and affixed my official seal, this 23rd day of July, in the year of our Lord one thousand eight hundred and seventy, at Elizabethtown, Colfax county, New Mexico.

(Signed)

JOHN LEE,

Clerk Probate Court.

39 TERRITORY OF NEW MEXICO, }
County of Colfax, } ss:

I, the undersigned, clerk of the probate court, and *ex officio* recorder for said county, Territory aforesaid, do hereby certify that the foregoing instrument of writing was received by me for record at 7 o'clock a. m., July 23d, A. D. 1870, and duly recorded in Deed Book "A," pages 146, 147, 148, 149 and 150, one hundred and forty-six, one hundred and forty-seven, one hundred — forty-eight, one hundred and forty-nine, and one hundred and fifty, of the records of Colfax county, New Mexico.

In testimony whereof I have hereunto set my hand and official seal this 27th day of July, A. D. 1870.

(Signed)

JOHN LEE,

[SEAL.]

*Clerk Probate Court and ex Officio Recorder**for Colfax County, N. M.*

TERRITORY OF COLORADO, }
County of Las Animas. }

I, L. M. Peterson, county clerk and recorder in and for the said county in the Territory aforesaid, do hereby certify that the within deed was filed in my office for record on this 2d day of August, A. D.

1870, at nine o'clock a. m., and duly recorded in volume No. 3, on pages Nos. 4, 5, 6, 7, 8, 9.

(Signed)

L. M. PETERSON,
County Clerk and Recorder.

And afterwards, to wit: on the thirtieth day of August, A. D. 1870, the complainants filed in the clerk's office of said district court the following exhibit marked "A" referred to in the foregoing bill, which exhibit is in the words and figures following, to wit:

Be it remembered that heretofore, to wit: at a special term
40 of the district court for the first judicial district of the Territory of New Mexico, begun and held within and for the county of Taos, on the 29th day of May, A. D. 1865, among other things the following proceedings were had, to wit:

United States District Court, County of Taos, September Term 1,
1865.

ALFRED BENT, ESTEFANA HICKLIN and ALEX-
ander Hicklin, Her Husband; Teresina Bent,
alias Teresa T. Bent, and Aloys Scheurick,
Her Husband, and also by Her Next Friend,
Ceran St. Vrain,

vs.

GUADALUPE MIRANDA, JOSEPH PEEY, LUZ BEAU-
bien and Lucien B. Maxwell, Her Husband,
and the said Maxwell, Leonor Beaubien, Petra
Beaubien and Jesus G. Abreu, Her Husband;
Teodora Beaubien and Frederick Miller, Her
Husband; Juana Beaubien and Joseph Clo-
thier, Her Husband, and Pablo Beaubien,
Minor, and the said Frederick Miller, His
Guardian, and Vidal Trujillo, the Husband of
the said Leonor Beaubien, Defendants.

Bill in Chancery
for Partition of
Real Estate.

And now on this day came the parties by their counsel, and this cause having been at a former term of this court heard upon the bill and amended bill, and the answer thereto, the supplemental bill and the answer, and the testimony herein on file, as taken in this cause, which cause was taken under advisement by the court as to the decree which should be made in the premises, and the court being fully advised, in consideration thereof, therefore, it is ordered adjudged and decreed by the court that the said complainants, Alfred Bent,
41 Estefana Hicklin, and Teresina otherwise Teresa T. Bent, be and are hereby declared to be the natural son and daughters of the said Charles Bent in the said bill mentioned, by him begotten upon and conceived and born of Ygnacio Jamarillo, within the Territory of New Mexico, formerly the department or province of New Mexico, and at the time the said Alfred, Estafana and Teresa were begotten and conceived, no lawful impediment existed to prevent the said

Charles Bent and Ygnacio Jamarillo from in due form of law solemnizing a contract of marriage, the one with the other; that as such natural children the said Alfred, Estefana and Teresa, in the absence of any child or heir born in wedlock to the said Charles Bent, became and were at the time of his decease the true and lawful heirs of his body in this Territory, with the full power, right and authority to inherit, succeed to and receive the estate, property, rights and interests of property of the said Charles Bent in the said Territory, and that as such children and heirs they are justly and lawfully entitled to have, maintain, receive, possess and enjoy all the rights, interest and estate which in law or equity belonged or pertained to the said Charles Bent at the time of his decease, of, in or to the lands, real estate or grant as described and set forth in the complainants' bill and the exhibit therein referred to, which description is as follows, to wit: Commencing below the junction of the Ryado river with the Colorado, thence in a direct line to the east to the first hills, and from thence running parallel with said Colorado river to the north, to a point in front of the junction of the Una de Gato with the said Colorado river, thence following said hills to the east of the said river of the Una de Gato, to the summit of the mesa, thence turning to the northeast along said summit, to the summit of the mountain that separates the waters that flow to the east from those that flow to the west, and from thence following the said mountain to the south of the first ceja, south of
42 the Ryado river, and from thence following the summit of said ceja, east to the place of beginning.

It is further ordered, adjudged and decreed that the said Charles Bent at the time of his decease was justly and equitably entitled and seized of one undivided fourth part of the estate in and to the said tract of land, real estate or grant, and that the said Charles Beaubien and Guadalupe Miranda were at said time so entitled and seized of an equal undivided share of the remaining three-fourths of the said tract or grant.

Furthermore, that the said Alfred, Estefana, and Teresina (alias Teresa T.), upon the decease of their said father, inherited, succeeded to and became seized of the said undivided one-fourth part interest and estate which belonged or pertained to the said Charles Bent in law and equity, in and to the land or real estate in the entire tract or grant aforesaid, at the time of his decease, and that the said Alfred Bent, Estefana and Teresina, are now fully and absolutely entitled to and seized of the undivided one-fourth part of the interest and estate of the said tract of land or grant.

Furthermore, that the said undivided one-fourth part in and to the said tract or grant of land or real estate be, and hereby is declared established and confirmed to them, the said Alfred, Estefana and Teresina (alias Teresa T.) and to their heirs and assigns forever, with the full and perfect right, powers and authority to possess and enjoy the same.

It is further ordered, adjudged and decreed that a just and equitable partition be made of the said tract of land or grant between the said Alfred, Estefana and Teresina, and the said daughters and

son of the said Charles Beaubien, deceased, defendants herein, and Lucien B. Maxwell, the assignee and grantee of the said Guadalupe Miranda, according to the rights, interests and estate hereinabove declared between the respective parties.

43 Furthermore, that the special commissioners hereinafter appointed to make and allot the said partition shall first take and subscribe an oath before the judge or the clerk of this court, the clerk of the probate for the country of Mora, or the justice of the peace within and for the precinct including the county-seat of said county to well and faithfully, without partiality, prejudicial favor or ill will, to the best of their knowledge, understanding, skill and abilities, make a partition and allotment of the said tract of land or grant, between the parties and in the manner or form prescribed and required in this decree, and the said oath so taken and subscribed shall be duly certified by the officer administering the same and by the commissioners, annexed to and returned with the report by them to be made to this court.

That when the oaths shall be so taken and subscribed, the said commissioners shall jointly proceed in person upon the said tract or grant and without any unnecessary delay, and shall inspect the same throughout its extent and especially the streams and springs of water and their capacities, one year with another to supply water for the purpose of irrigating the lands connected with or contiguous to the said streams, susceptible of cultivation and irrigation; the mines and minerals of whatsoever description; the quarries of rock or stones; timber for building, fencing and fire-woods; the lands suitable for plowing, planting and sowing; and grounds and — for pasturage.

They shall then make a partition of the said tract or grant, according to quantities, quality and value, and designate and describe the tracts or partitions divided by such descriptions, and natural and artificial objects, or marks or boundaries as shall remain plain and permanent and easily found. They shall part and lay off one-fourth part of the said tract or grant and divide, part and lay off the remaining three-fourths of the same into two equal parts.

44 In making the said partition of one-fourth and of the said three-fourths, regard shall be had to the buildings, acequias, cultivation and improvements made by the said Lucien B. Maxwell, upon the said tract or grant of land and nothing shall be credited to the other parties or charged and considered against the said Maxwell for any buildings, acequias, cultivation or improvements made and added to the said grant or tract of land by him or by persons holding and possessing by or through him in good faith. This shall have especial reference to the commencement of this suit upon the twelfth day of September, one thousand eight hundred and fifty-nine, and to the principal places and portions then occupied and improved by him and those by or under him. That in making and allotting the parts therein decreed, ordered and adjudged to be partitioned, the portions which shall be -portioned and allotted to the said Maxwell shall include the portions of said tract or grant, which the said Maxwell, or those under or through him, occupied and had

cultivated and improved before the commencement of the suit and since continued to occupy and improve, and the chief and principal portions, the said Maxwell has occupied and improved since the commencement of this suit.

In case the said Maxwell since the commencement of this suit has by himself or others in parts of said tract or grant remote from the principal farms and improvements actually occupied by him, made slight or temporary cultivation or improvements, which shall include the lands and waters in such manner as to leave not an equitable and just portion of the waters and cultivatable land to be parted to the other parties in this cause, then and in such case, the said remote land and waters included in such improvements or slight cultivations, shall in the partition to be made in this cause be considered and included in the said partition, the same as if the said improvements were not made upon the said lands. In

45 such case the commissioners shall assess the just and true value of the land covered by such improvements without their being added to the said lands, and also the said improvements by themselves exceeding the just and true value of them over and connected with the said lands and report the facts with their general report to this court, carefully noting the different assessed values, so that the court may decree justly and equitably concerning the same between the parties.

Furthermore, when the commissioners shall have parted the tract or grant of land as herein provided, they shall allot the one-fourth part to the said Alfred, Estefana and Teresa, (alias Teresa T.) Bent, and an equal portion of the said three-fourths, the one to the said Lucien B. Maxwell, and the other to the said son and daughters of the said Charles Beaubien, deceased.

In estimating the value of any improvements referred to herein, as made in certain remote places, and under the circumstances specified, the commissioners will also assess and report the value of the rents and profits since such places have been occupied and cultivated.

In parting and allotting to the said Maxwell the portion to be allotted to him, the said commissioners are hereby specially charged to estimate in the partition the lands which include the buildings, acequias, farms and other improvements by him made, or by others through or under him, in good faith, without reference to the value of any of the said improvements; that this provision does not extend to the aforesaid remote places and the improvements hereinbefore specially specified as connected therewith.

It is further ordered, adjudged and decreed that Lucien Stewart, of Taos county, and Vicente Romero and William Kroenig, of the county of Mora, in said Territory, be and they hereby are
46 appointed to execute and perform all the requirements and provisions of this decree, required of and to be done by commissioners, and that they make full, plain and exact report of their proceedings to the next term of this court.

Furthermore, it is ordered, adjudged and decreed that the said complainants pay to the said defendants, Maxwell and the said

daughters and son of the said deceased Charles Beaubien, the sum of one hundred dollars, the one-fourth part of the amount expended towards the procuring of the confirmation of the said tract or grant of land by the Government of the United States.

The court now reserves and suspend-making its decree as the partition and payment of the costs in this cause, until a future term of the court:

It appearing to the satisfaction of this court, upon the suggestion of the complainants, that since the last term of this court, Leonor Beaubien has been regularly and lawfully divorced from the bonds of matrimony before existing between her and the said Vidal Trujillo, it is ordered by the court that he be and hereby is dismissed from these proceedings, and that the clerk furnish a copy of this decree to the said Maxwell and also to the commissioners, and one for the said son and daughters, should these latter require the same, and that this cause stand continued until the next term of this court.

Signed June 3, 1865.

KIRBY BENEDICT,
Chief Justice.

47 & 48 And afterwards, to wit, on the same day and year last aforesaid, the complainants filed in the clerk's office of said district court the following exhibit, marked "B," referred to in the foregoing bill, which exhibit is in the words and figures following, to wit:

Be it remembered that at a regular term of the district court for the first judicial district of the Territory of New Mexico, begun and held within and for the county of Taos, on the 9th day of April, A. D. 1866, on the second day of said term, among other things the following proceedings were had, and were in the words and figures following, to wit:

ALFRED BENT and Others	}	No. 1. In Chancery.
<i>vs.</i>		
THE HEIRS OF CHAS. BEAUBIEN and Others.		

Now on this day came the complainants, by their counsel, and suggest to the court the death of Alfred Bent, one of the complainants herein, and moves the court for leave to make Chas. Bent, Julian Bent, and Alberto Silas Bent, his children and heirs, parties complainants herein, which said motion is granted by the court, and the said Chas. Bent, Julian Bent and Alberto Silas Bent are hereby made parties complainant to this bill of complaint.

And afterwards, to wit, on the fourth day of said term of said court, among other things the following proceedings were had, which are in the words and figures following, to wit:

ALFRED BENT and Others
 vs.
 THE HEIRS OF CHAS. BEAUBIEN and Others. } No. 1. In Chancery.

This cause stands continued until the next term of this court.

And afterwards, to wit, on the fifth day of said term of said court, among other things the following proceedings were had, which are in the words and figures following, to wit:

49 ALFRED BENT and Others
 vs.
 THE HEIRS OF CHARLES BEAUBIEN and Others. } No. 1. In Chancery.

By agreement of the parties, the continuance of this cause, made herein on a former day of this term of this court, is set aside, and on motion of solicitors for complainants, Guadalupe Bent — hereby appointed guardian *ad litem*, and commissioner in chancery, for the minors of Alfred Bent, in this cause, with full power to execute deeds, or carry into execution all sales or transfers made of their interest in and to the real estate therein described to Lucien B. Maxwell, one of the defendants in said cause, and this cause stands continued until the next term of this court.

And afterwards, to wit, at the September term of said court, 1866, begun and held on the 10th of said month of September, and on the 3rd day of said term of said court, among other things the following proceedings were had, which are in the words and figures following, to wit:

GUADALUPE BENT, Guardian *ad Litem* for
 Charles Bent, Julian Bent, and Alberto
 Silas Bent, Minor Heirs and Children of
 Alfred Bent, Deceased; Alexander Hicklin
 and Estefana Hicklin, His Wife; Aloys
 and Terisa Bent, His Wife,
 vs.
 LUCIEN B. MAXWELL, FREDERICK MILLER,
 Jesus G. Abreu, Executors of the Estate
 of Charles Beaubien, Deceased; Luz
 Beaubien and Lucien B. Maxwell, Her
 Husband; Leonor Beaubien, Teodora
 Beaubien, and Frederick Miller, Her
 Husband; Petra Beaubien and Jesus G.
 Abrieu, Her Husband; Juana Beaubien
 and Joseph Clothier, Her Husband, and
 Pablo Beaubien, by Frederick Miller, His
 Guardian. } No. 1. In Chancery.

50 In the District Court for the County of Taos, in Chancery
 Sitting.

Whereas an interlocutory decree was rendered at a former term of this court in the above cause, decreeing one-fourth of the land

mentioned in the petition herein to the complainants in this cause, and appointing commissioners to divide and set apart the portion so decreed, and whereas said interlocutory decree was never carried into effect, and whereas since the time of the rendition of said decree a mutual agreement has been made between the parties to this cause, settling and determining all the equities in the same:

It is therefore hereby ordered, adjudged and decreed by the mutual consent and agreement of the said complainants as well as of the said defendants in this cause, that the interlocutory decree above mentioned, together with all orders made under and by virtue of the same be set aside; and by the mutual consent and agreement of the said parties, it is hereby further ordered, adjudged and decreed that the said Lucien B. Maxwell, one of the defendants in this cause, pay to the said complainants the sum of eighteen thousand dollars, to be divided among them *per stirpes*, that is to the said Aloys Scheurick and Teresina Bent, his wife, one-third part, and to Alexander Hicklin and Estefana Bent, his wife, another third part, and to Charles Bent, Julian Bent and Alberto Silas Bent, the children and heirs of Alfred Bent, deceased, the remaining third part, to be equally divided among the said last named and to be paid into the hands of Guadalupe Bent, widow of the — Alfred Bent, deceased, and guardian *ad litem* for said children for the purposes of the said division.

And upon the further consent and agreement of the said parties, it is hereby further ordered, adjudged and decreed, that the said Alexander Hicklin and Estefana Bent, his wife, the said Aloys

51 Scheurick, and Teresina Bent, his wife, and the said Guadalupe Bent, guardian, *ad litem*, for Charles Bent, Julian Bent and Alberto Silas Bent, children and minor heirs of the said Alfred Bent, deceased, within ten days from the day of the date of this decree, make, execute and deliver to the said Lucien B. Maxwell good and sufficient deeds of conveyance of all their right, title, interest, estate, claim and demand of, in and to the lands in controversy in this cause; the said Guadalupe Bent, guardian *ad litem* as aforesaid, in the name of Charles Bent, Julian Bent and Alberto Silas Bent, minor heirs as aforesaid, and the said Alexander Hicklin and Estefana Bent, his wife, and the said Aloys Scheurick and Teresina Bent, his wife, in their own names. And by further consent and agreement between the said parties, it is hereby further ordered, adjudged and decreed, that the costs of this suit shall be paid, each of the said parties to pay the separate costs in the same made by themselves.

52 And afterwards, to wit, on the second day of September, A. D. 1870, the complainants filed in the clerk's office of said district court the following exhibit, marked "F," referred to in the foregoing bill, which exhibit is in the words and figures following, to wit:

This deed, made and entered into this third day of May, A. D. eighteen hundred and sixty-six, by and between Aloys Scheurick

and Teresina Scheurick, *née* Bent, his wife, of the town of Don Fernando de Taos, in the county of Taos, and Territory of New Mexico, parties of the first part, and Lucien B. Maxwell, of "El Cimarron," in the county of Mora, and Territory aforesaid, party of the second part, witnesseth, that the said parties of the first part for and in consideration of the sum of six thousand (\$6,000) dollars to them in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, have granted, bargained and sold, aliened, enfeoffed, conveyed and confirmed, as by these presents

53 they do grant, bargain and sell, alien, enfeoff, convey and confirm unto the said party of the second part, his heirs and assigns, the following-described real estate, situate, lying and being in the aforesaid county of Mora, and Territory of New Mexico, and known and described as the Rayado grant, heretofore granted to Charles Beaubien and Guadalupe Miranda by Governor Armijo, on the eleventh day of January A. D. 1841, and which is bounded and described as follows, to wit: Beginning on the east side of the Rio Colorado at a mound of rocks; thence running in straight line eastward to the first hills to another mound of rocks; thence continuing from south to north in a parallel line with the River Colorado to the third mound of rocks on the northern edge of the table-lands of Chicouca or Chacauco thence turning westwards and following the edge of the said table-lands of Chacauco, to the top or comb of the Sierra Madre, to the fourth mound of rocks; thence from the north to the south following the top of the Sierra Madre to the Cuesta del Osha, one hundred varas (100 v.) to the north of the road to Fernandez and to the Laguna Negra, to the fifth mound of rocks; thence turning anew to the east toward the Rio Colorado and following the southern edge of the table-lands of Rayado and Gonzolitos to the eastern point of these table-lands to the sixth mound of rocks, and thence following in a northerly direction until the said line strikes the Rio Colorado, on the western bank of said river, where the seventh mound of rocks was placed.

To have and to hold the one undivided one twelfth (one-12th) interest, of, in and to the above-described real estate, together, all and singular, the rights, immunities, hereditaments, privileges and appurtenances thereto belonging or in anywise appertaining unto the said party of the second part and his heirs and assigns forever; the said one-twelfth undivided interest being the entire interest, estate, claim and demand of the said Teresina Scheurick, *née*

54 Bent, of, in and to the real estate above described, as a child of and one of the heirs of Charles Bent, late of the Territory of New Mexico, deceased, and the said grantors, hereby covenant to and with the said grantee, his heirs and assigns, that the above-described interest hereby conveyed of, in and to the said real estate, is free and clear of all incumbrances, and that they, the said grantors, their heirs, executors and administrators shall and will warrant and defend the title to the same unto the said grantee, his heirs and assigns forever against the lawful claims or demands of all persons whomsoever.

In witness whereof, the said parties of the first part have hereunto set their hands and seals the day and year first above written.

ALOYS SCHEURICK. [SEAL.]
TERESINA SCHEURICK *née* BENT. [SEAL.]

Signed, sealed and delivered in presence of—

ADOLPH LETCHER.
WM. G. BLACKWOOD.

TERRITORY OF NEW MEXICO, }
County of Taos, } ss :

Be it remembered that on this third day of May, A. D. eighteen hundred and sixty-six, before me, the undersigned, clerk of the court of probate, within and for the county aforesaid, personally came Aloys Scheurick and Teresina Scheurick, *née* Bent, his wife, who are both personally known to me to be the same persons whose names are subscribed to the foregoing deed of conveyance as parties thereto, and they severally acknowledged that they executed the same as their act and deed for the uses and purposes therein mentioned, and the said Teresina Scheurick, *née* Bent, having been by me first made acquainted with the contents of said deed upon an examination separate and apart from her said husband, acknowledged that she executed the same as her free and voluntary act and deed, without compulsion or undue influence of her said husband.

55 In witness whereof, I have hereunto set my hand and affixed the seal of the said court, the day and year last above written.

[Seal Probate Court, Taos Co.]

INOCENCIO MARTINEZ,
*Clerk of the Court of Probate for the
County of Taos, Territory of N. M.*

Filed at 3 o'clock p. m., January 16th, 1870.

J. LEE, *Clerk.*

TERRITORY OF NEW MEXICO, }
County of Colfax, } ss :

I, the undersigned, clerk probate court and *ex officio* recorder for said county, Territory aforesaid, do certify that the foregoing is a true and correct copy of the original deed as recorded in my office. Deed Book "A," pages 81 and 82.

Witness my hand and official seal, this first day of September, A. D. 1870.

[Seal Probate Court, Colfax Co., N. M.]

JOHN LEE,
Clerk Probate Court and ex Officio Recorder.

And afterwards, to wit, on the same day and year aforesaid, the complainants filed in the clerk's office of said district court the fol-

lowing exhibit, marked "G," referred to in the foregoing bill, which exhibit is in words and figures following, to wit:

(U. S. I. R. S. \$10.00. C. F., May 31st, 1866.)

This deed, made and entered into this 31st day of May, A. D. eighteen hundred and sixty-six, by and between Alexander Hicklin and Estefana Hicklin *née* Bent, his wife, of Greenhorn, in the county of Huerfano, and Territory of Colorado, parties of the first part, and Lucien B. Maxwell, of "El Cimarron," in the county of Mora, and

56 Territory of New Mexico, party of the second part, witnesseth, that the said parties of the first part, for and in consideration of the sum of six thousand (\$6,000) dollars to them in land paid by the said party of the second part, the receipt of which is hereby acknowledged, have granted, bargained and sold, aliened, enfeoffed, conveyed and confirmed, as by these presents they do grant, bargain and sell, alien, enfeoff, convey and confirm unto the said party of the second part, his heirs and assigns, the following-described real estate, situate, lying and being in the aforesaid county of Mora, and Territory of New Mexico, and known and described as the Rayado grant, heretofore granted to Charles Beaubien and Guadalupe Miranda by Governor Armijo, on the eleventh day of January, A. D. 1841, and which is bounded and described as follows, to wit: Beginning on the east bank of the Rio Colorado, at a mound of rocks; thence running in a straight line eastward to the first hills to another mound of rocks, thence continuing from south to north on a parallel line with the River Colorado to the third mound of rocks on the northern edge of the table-lands of Chicouca O'Chacuaco, thence turning westward and following the edge of the said table-lands of Chacuaco to the *the* top or comb of the Sierra Madre, to the fourth mound of rocks; thence from north to south, following the top of the said Sierra Madre to the Cuesta del Osha, one hundred (100 v.) varas, to the north of the road to Fernandez and to the Laguna Negra to the fifth mound of rocks; thence turning anew to the east towards the Rio Colorado, and following the southern edge of the table-lands of Rayado and Gonzalitos to the eastern point of these table-lands to the sixth mound of rocks; and thence following in a northerly direction until the said line strikes the Rio Colorado on the western bank of said river, where the seventh mound of rocks was placed.

To have and to hold the one undivided one-twelfth (one-12th) interest of, in and to the above-described real estate, together
57 with all and singular the rights, immunities, hereditaments, privileges and appurtenances thereunto belonging, or in anywise appertaining unto the said party of the second part, and his heirs and assigns forever, the said one-twelfth undivided interest, being the entire interest, estate, claim and demand of the said Estefana Hicklin *née* Bent, of, in and to the real estate above described, as a child of, and one of the heirs of Charles Bent, late of the Territory of New Mexico, deceased, and the said grantors hereby covenant to and with the said grantee, his heirs and assigns, that the above-described interest hereby conveyed of, in and to the said real

estate, is free and clear of all incumbrances, and that they, the said grantors, their heirs, executors and administrators, shall and will warrant and defend the title to the same unto the said grantee, his heirs and assigns forever, against the lawful claims or demands of all persons whomsoever.

In witness whereof the said parties of the first part have hereunto set their hands and seals the day and year first above written.

A. HICKLIN. [SEAL.]
ESTEFANA HICKLIN. [SEAL.]

Signed, sealed and delivered in the presence of—

MATT. REDLINGER.
L. KICKABARGLE.

TERRITORY OF COLORADO, }
County of Huerfano. }

Be it remembered that on this thirty-first day of May, A. D. eighteen hundred and sixty-six, personally came before me, the undersigned, clerk of the court of probate, within and for the county aforesaid, Alexander Hicklin and Estefana Hicklin *née* Bent, his wife, who are both personally known to me to be the same persons whose names are subscribed to the foregoing deed of conveyance as parties thereto, and they severally acknowledge
58 that they executed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned; and the said Estefana, having been by me first made acquainted with the contents of the said deed, on an examination separate and apart from her said husband, acknowledged that she executed the same freely and voluntarily, and without compulsion or undue influence of her said husband.

In witness whereof I have hereunto set my hand and affixed the seal of said court, the day and year last above written.

GEORGE S. SIMPSON, [SEAL.]
Clerk of Probate Court.

No public seal provided.

Filed for record, 3 o'clock p. m., January 16th, 1870.

TERRITORY OF NEW MEXICO, }
County of Colfax, } 88 :

I, the undersigned, clerk of the probate court, and *ex officio* recorder of said county, Territory aforesaid, do hereby certify that the foregoing is a true and correct copy of the original deed as recorded in my office, Deed Book A, pages eighty-two, eighty-three and eighty-four, (82, 83 and 84).

In testimony whereof I have hereunto set my hand and official seal this first day of September, A. D. 1870.

[Seal Probate Court, Colfax Co., N. M.]

JOHN LEE,
Clerk Probate Court and *ex Officio* Recorder
Colfax County, New Mexico.

And afterwards, to wit, on the same day and year last aforesaid, the complainants filed in the clerk's office of the said district court, the following exhibit, marked "H," referred to in the foregoing bill, which exhibit is in the words and figures following, to wit:

59 (U. S. I. R. S. \$10,000, Taos, N. M., May 3, 1866.)

Know all men by these presents, whereas, I, Guadalupe Bent *née* Long, of the town of El Rancho, in the county of Taos, and Territory of New Mexico, and widow of Alfred Bent, late of the same place, deceased, by virtue of a decree and order of the district court of the United States of America, for the first judicial district, of the Territory of New Mexico, at the April term of said court, A. D. 1866, held within and for the said county of Taos, was appointed guardian *ad litem*, and commissioner in chancery for Charles Bent, Julian Bent and Albert Silas Bent, minor heirs of the said Alfred Bent, deceased, as aforesaid; and, whereas, the words of said decree and order of said court are as follows, to wit:

"Territory of New Mexico, First Judicial District Court, County of Taos, April Term, 1866.

ALFRED BENT and Others

vs.

THE HEIRS OF CHARLES BEAUBIEN and
Others.

} (No. —.) In Chancery.

"By agreement of the said parties, the continuance of the cause made herein on a former day of the present term of this court, is set aside, and on motion of solicitors for complainant, Guadalupe Bent is hereby appointed guardian *ad litem*, and commissioner in chancery for the minor heirs of Alfred Bent in this cause, with full power to execute deeds, or carrying into execution all sales or transfers made of their interest in and to the real estate therein described, to Lucien B. Maxwell, one of the defendants in said cause, and that this cause stand continued until the next term of this court," all of which proceedings so had as aforesaid, will

60 is hereby made. Now, therefore, by reason of the premises, and by virtue of the power and authority on me conferred by the said decree, I, Guadalupe Bent, guardian *ad litem*, and resident as aforesaid, for and in consideration of the sum of six thousand (\$6,000) dollars to me in hand paid by the said Lucien B. Maxwell, of El Cimarron, of the county of Mora and Territory of New Mexico, the receipt of which is hereby acknowledged, have granted, bargained and sold, conveyed, confirmed and transferred, as by these presents, I do grant, bargain and sell, convey, confirm and transfer unto the said Lucien B. Maxwell, his heirs and assigns, the following-described real estate, situate, lying and being in the aforesaid county of Mora, and Territory of New Mexico, and known and described as the "Rayado grant," heretofore granted to Charles Beaubien, and Guadalupe Miranda by Governor Armijo, on the

eleventh day of January, A. D. 1841, and which is bounded and described as follows, to wit: Beginning on the east bank of the Rio Colorado at a mound of rocks, thence running in a straight line eastward to the first hills to another mound of rocks; thence continuing from south to north on a parallel line with the River Colorado to the third mound of rocks on the northern edge of the table-lands of Chicouca O'Chacuaco; thence running westward and following the edge of the said table-lands of Chacuaco to the top or comb of the Sierra Madre, to the fourth mound of rocks; thence from north to south, following the top of the said Sierra Madre to the Cuesta del Osha, one hundred (100 v.) varas, to the north of the road to Fernandez and to the Laguna Negra to the fifth mound of rocks; thence running anew to the east towards the Rio Colorado, and following the southern edge of the table-lands of Rayado and Gonzalitos to the eastern point of these table-lands to the sixth mound of rocks; and thence following in a northerly direction until the said line strikes the Rio Colorado on the western bank of said river, where the seventh mound of rocks was placed.

To have and to hold the one undivided one-twelfth (one-12th) interest, of, in and to the above-described real estate, together — all and singular, the rights, immunities, hereditaments, privileges and appurtenances thereunto belonging or in anywise appertaining unto the said Lucien B. Maxwell, and his heirs and assigns forever; the said one-twelfth undivided interest being the entire interest, estate, claim and demand of the said Charles Bent, Julian Bent and Alberto Silas Bent said minor heirs of their father, said Albert Bent, deceased, of, in and to the real estate as a child, and one of the heirs of Charles Bent, Senior, late of the Territory of New Mexico, deceased; and I, the said Guadalupe Bent, guardian *ad litem*, do hereby covenant to and with the said Lucien B. Maxwell, his heirs and assigns, that the above-described interest hereby conveyed of, in and to the said real estate, is free and clear from all incumbrances, and that I, my heirs, executors and administrators, shall and will warrant and defend the title to the same unto the said Lucien B. Maxwell, his heirs and assigns forever, against the lawful claims or demands of all persons whomsoever.

In witness whereof, I have hereunto set my hand and seal this third day of May, A. D. eighteen hundred and sixty-six.

GUADALUPE BENT NÉE LONG, [SEAL.]

Guardian ad Litem of Charles Bent,

Julian Bent, and Albert Silas Bent.

Signed, sealed and delivered in presence of—

ADOLPH LETCHER.

WM. BLACKWOOD.

TERRITORY OF NEW MEXICO, }
County of Taos, } ss :

Be it remembered that on the third day of May, A. D. eighteen hundred and sixty-six, personally came before me

the undersigned clerk of probate, within and for the county aforesaid, Guadalupe Bent *née* Long, who is personally known to me to be the same person whose name is subscribed to the foregoing deed of conveyance as party thereto, and she acknowledged that she executed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed the seal of the said court the day and year last above written.

[Seal Probate Court, Taos County, N. M.]

INOCENCIO MARTINEZ,
*Clerk of the Court of Probate for the County
of Taos, Territory of New Mexico.*

Filed at 3 o'clock p. m. January 16, 1870.

J. LEE, *Clerk.*

TERRITORY OF NEW MEXICO, }
County of Colfax, } ss.

I, the undersigned, clerk of the probate court and *ex officio* recorder for said county, Territory aforesaid, do hereby certify that the foregoing is a true and correct — of the instrument as recorded in my office. Deed Book "A," pages 78, 79, 80, and 81.

Witness my hand and official seal, this first day of September, A. D. 1870.

[Seal Probate Court, Colfax Co., N. M.]

JOHN LEE,
Clerk Probate Court and ex Officio Recorder.

63 And afterwards, to wit, on the first day of November, 1871, two of the said defendants, George W. Thompson and wife filed in the clerk's office of said district court their answer to said bill of complaint, which answer is in the words and figures following, to wit:

TERRITORY OF NEW MEXICO, }
County of Colfax, } ss.

In the District Court, 1st Judicial District, March Term, 1872.

LUCIEN B. MAXWELL and THE MAXWELL LAND }
GRANT AND RAILWAY COMPANY *et al.* } In Chancery.
vs.
GUADALUPE THOMPSON *et al.*

The joint and several answer of Guadalupe Thompson and George W. Thompson (called in plaintiffs' bill George Thompson), husband of the said Guadalupe, two of the defendants, to the bill of complaint of Lucien B. Maxwell and Luz B. Maxwell, his wife, and the Maxwell Land Grant and Railway Company.

The respondents now and at all times hereinafter reserving all manner of benefit and advantage to themselves of exception to the

many errors and insufficiencies in said bill contained for answers thereunto so unto so much or such parts thereof as these respondents are advised as material for them to make answer unto. They answer and say that they admit that the Republic of Mexico granted unto Charles Beaubien and Guadalupe Miranda a tract of land as stated in complainants' bill and that the same was duly ratified by Congress, etc., but deny that they and those holding under them have ever since maintained and still maintain exclusive quiet 64 and peaceable possession thereof. Respondents deny that on the 29th day of May, A. D. 1865, (or at another time) the said Lucien B. Maxwell and wife had become and then were (or at any other time) the sole owners in fee-simple and undivided of the whole of the aforesaid granted premises with the exception of a few small parcels heretofore sold by them to other persons. And respondents know nothing in regard to certain deeds alleged by plaintiffs to have been executed subsequently to the said last-mentioned dates to the said Maxwell in confirmation of purchases previously made by him.

Respondents further say that they are strangers to and know nothing of their own knowledge of the sale and conveyance of Lucien B. Maxwell and his wife of the premises or grant aforesaid to the said Maxwell Land Grant and Railway Company, and therefore have complainants to make such proof thereof as they shall be able to produce. Respondents admit that about the time alleged in complainants' bill, Alfred Bent, since deceased, Estefana Hicklin and Alexander Hicklin, her husband, Teresa Bent (now Scheurick) and Aloys Scheurick, her husband, and also by her next friend, Ceran St. Vrain, commenced a suit in the district court of the said Territory of New Mexico, for the county of Taos, in the first judicial district, against the said Lucien B. Maxwell, and Luz Beaubien Maxwell, his wife, and sundry other persons as to whose interests in the object of this suit respondents are so advised. As to the loss of the pleadings in said suit, and complainants' search for the same, these respondents know nothing, nor do they know anything as to what was alleged in said proceedings, and pray that all the means in the power of this honorable court be used to find the said pleadings, and have them before this honorable court, or that complainants be held to make strict proof of the same. They admit, however,

65 that Charles Bent died intestate, and that the said Alfred Bent, deceased, Estefana Hicklin and Teresina Scheurick were the children and only heirs of the said Charles Bent, and that they were entitled equitably or otherwise to the one-fourth part of the aforesaid grant or tract of land; but as to the exact legal or equitable title, or how it was claimed and asserted in the pleadings in said cause, respondents are not advised otherwise than by complainants' bill, and the decree of partition rendered in said cause.

They admit, however, that the complainants in said cause prayed for a partition of the premises referred to in said cause upon the footing of the claim as set forth in their petition in said cause.

Respondents admit that the parties respectively appeared in said cause by their counsel, and that the defendants therein filed their answer, but as to the substance and import of said answer, respondents

ents are not advised, otherwise than by what still remains of the record in said cause.

Respondents admit that said cause came by legal continuance to the term held within and for the county of Taos, on the 29th day of May, 1865, when and where the respective parties again appeared as the record shows and that a decree was rendered, which for greater certainty is here referred to and a copy thereof herewith filed and marked Exhibit "A," and prayed to be taken as a part of the answer of these respondents.

Respondents further answering say, that as to what agreement the other parties to the said suit for partition may have made with the said Maxwell, they are not fully advised; but they wholly deny as they are advised and believe that the said Alfred Bent at any time after the rendering of said decree of partition and before his death, or at any other time was a party to any such agreement as alleged by complainant by way of compromise, sale or otherwise.

Respondents admit as stated in complainants' bill that
66 after the rendition of said decree of partition, the said Alfred

Bent departed this life, to wit, on the ninth day of December, A. D. 1865, at Taos, in this Territory, and that he left three minor children and heirs, who respondents state are still minors and the only heirs of the said Alfred Bent, deceased, to wit, the said Charles Bent, of the age of eleven years, Julian Bent, of the age of nine years, and Alberto Silas Bent, of the age of seven years, being the same who are made parties defendant in plaintiffs' bill.

Respondents further answering say, that as to the proceedings alleged by complainants to have taken place at the term of the court held in and for the county of Taos, on the ninth day of April, 1866, they beg leave to refer to the record of said court for a full, perfect and more certain answer herein without admitting the validity and legality of the same, but as administratrix and administrator as alleged in complainants' bill protesting against the same as illegal, unjust and void as to the minor children aforesaid.

Respondents admit that the several payments in pursuance of said pretended decree were afterwards made as alleged by complainants to the said Estefana Hicklin and Teresina Scheurick and their husbands. As to the allegations of plaintiffs touching the supposed order or decree and the effect of the proceedings in this honorable court last above referred to, these respondents are not competent to answer, as they are advised that they are questions of law, wherefore they are all referred to this honorable court for its decision. They deny, however, that by said proceedings the minor heirs of Alfred Bent, deceased, were in any manner divested of any title either legal or equitable, they had at the time, in the said grant or tract of land.

These respondents admit that the said agreement was fully carried out in good faith by the said surviving plaintiffs, Teresina Bent, now

67 Sheurick, and Estefana Bent, now Hicklin, and their husbands so far as they were bound and affected by the same, by their respectively executing and delivering to the said Maxwell, the conveyances referred to in complainants' bill, and that

respondent Guadalupe Thompson, also acted in good faith in making the pretended deed on her part, but that she was wholly ignorant of her duties, obligations and responsibilities as guardian *ad litem*, of the minor children aforesaid, or as commissioner in chancery, to carry into effect, sales, etc., and wholly ignorant of the rights of the said minors in the premises; but as to whether the said trust, or equitable interest, or claim of the said Alfred Bent, and his said minor heirs, was wholly terminated and extinguished, or not, respondents are not competent to answer; these likewise being questions of law referable to this honorable court for decision; but they are advised that the said supposed deed of conveyance by the said Guadalupe Thompson was illegal and void, and wholly inoperative so far as the right and interests of the said minors are concerned.

Respondents deny that six thousand dollars have passed into the hands of the said Guadalupe Thompson from the said Maxwell, but admit that a portion of six thousand may have so passed, but whether it was paid to her as administratrix or guardian *ad litem*, she is and was at the time of said payment wholly ignorant.

Respondents know nothing of Thomas Boggs having ever been appointed administrator of the estate of the said Alfred Bent, deceased.

And these respondents deny all manner of unlawful combination, etc., without this, that there is any other matter or thing in the complainants' said bill contained material or necessary for these defendants to make answer unto and not herein, and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true, to the knowledge or belief of these defendants.

68 All of which matters these defendants are ready and willing to aver, maintain and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs, etc.

GUADALUPE THOMPSON,
GEORGE W. THOMPSON,
By S. M. BAIRD AND
GEORGE BOYLES,
Their Attorneys.

TERRITORY OF COLORADO, }
County of Las Animas. }

George W. Thompson, being duly sworn according to law, says that the above answer is true in substance, and in fact, except as to such matters as are stated upon information and belief, and he believes them to be true.

G. W. THOMPSON.

Subscribed and sworn to before me this twenty-fifth day of October, A. D. 1871.

[Las Animas Co., R. W. A., Notarial Seal.]

ALBERT W. ARCHIBALD,
Notary Public within and for the County of
Las Animas, in the Territory of Colorado.

And afterwards, to wit, on the same day and year last aforesaid, the said infant defendants, by their guardian *ad litem*, filed in the clerk's office of said district court, their answer to complainants' bill of complaint, which answer is in the words and figures following, to wit:

TERRITORY OF NEW MEXICO, }
County of Colfax, } ss :

In the District Court, First Judicial District, Sitting in and for the County of Colfax, March Term, A. D. 1872.

LUCIEN B. MAXWELL and THE MAXWELL LAND }
GRANT AND RAILWAY COMPANY *et al.* }
vs. } In Chancery.
GUADALUPE THOMPSON *et al.* }

69 The answer of Charles Bent, Juliana Bent, and Alberto Silas Bent (infants under the age of twenty-one years, by George Boyles, their guardian *ad litem*), defendants, to the bill of complaint of Lucien B. Maxwell and Luz B. Maxwell, his wife, and the Maxwell Land Grant and Railway Company.

These defendants answering, by their said guardian, say that they are infants of the age of eleven, nine and seven years respectively and they therefore submit their rights and interest in the matters in question in this cause to the protection of this honorable court.

By GEORGE BOYLES,
Their Guardian ad Litem.

And afterwards, to wit, on the second day of December, A. D. 1871, the said complainants filed in the clerk's office of the said district court, their replication to the answer of Guadalupe Thompson, administratrix, and George W. Thompson, two of the defendants, which replication is in the words and figures following, to wit:

In the District Court for the County of Colfax, at the — Term, A. D. 1871.

LUCIEN B. MAXWELL, LUZ B. MAXWELL, and THE MAXWELL }
LAND GRANT AND RAILWAY COMPANY }
vs. }
GUADALUPE THOMPSON, Administratrix Estate of Alfred Bent, }
Deceased; George Thompson, Charles Bent, Juliana Bent, and }
Alberto Silas Bent. }

Replication of complainants to the answer of Guadalupe Thompson, administratrix, and George Thompson, defendants.

70 These repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, for replication

thereto *saith* that *he doth* and will ever maintain and prove their said bill to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive and unsufficient in the law, to be replied unto by *this* repliant-, without that that any other matter or thing in the said answer contained, material or effectual in the law to be replied to and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied is true; all which matters and things *this* repliant- *is* ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray, as in and by *his* said bill they hath already prayed.

S. B. ELKINS,
Attorney for Complainants.

And afterwards, to wit, on the twelfth day of December, A. D. 1871, complainants file in the clerk's office of said district court, their replication to answer of infant defendants by their guardian *ad litem*, which replication is in the words and figures following, to wit:

In the District Court for County of Colfax.

LUCIEN B. MAXWELL and LUZ B. MAXWELL, His Wife, and The Maxwell Land Grant and Railway Company	} In Chancery.
<i>vs.</i>	
GUADALUPE THOMPSON, Administratrix Estate of Alfred Bent, Deceased; George Thompson, Chas. Bent, Juliana Bent, and Alberto Silas Bent.	

Replication of complainants to answer of Chas. Bent, Juliana Bent, and Alberto Silas Bent, minors, by their guardian *ad litem*, George Boyles.

71 The repliants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants for replication thereunto, *saith* that they *doth* and will aver, maintain and prove their said bill to be true, certain and sufficient in the law to be answered unto by the said defendants; and that the answer of the said defendants is very uncertain, evasive and insufficient in the law, to be replied unto by *this* repliant- without that that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true, all which matters and things *this* repliant- *is* ready to aver, and humbly pray as in and by *his* bill *he* hath already prayed.

S. B. ELKINS,
Solicitor for Complainants.

72 And afterwards, to wit, on the fourth day of January, A. D. 1873, at chambers in the city of Santa Fé, before the Hon.

Joseph G. Palen, chief justice of said Territory, and judge of the first judicial district court, the following order was made and entered in above-entitled cause, in the words and figures following, to wit:

LUCIEN B. MAXWELL and LUZ B. MAXWELL, His Wife, and The Maxwell Land Grant and Railway Company	} Chancery.
<i>vs.</i> GUADALUPE THOMPSON, Administratrix, <i>et als.</i>	

Now came on to be heard the petition of said complainants for leave to amend their bill of complaint herein, as specified in said motion, and the same being now argued by Mr. Catron for the complainants, and by Mr. Tompkins for the defendants, and the court being sufficiently advised in the premises, sustains the prayer of said petition. It is therefore considered by the court that the said complainants have leave to amend their bill of complaint herein as specified in said petition, and the said defendants are ruled to answer such amendments to said bill in twenty days after the service of a copy of the same upon R. H. Tompkins, Esq., one of the solicitors of the said defendants.

And afterwards, to wit, on the eleventh day of January, A. D. 1873, the complainants filed in the clerk's office of said district court their amended bill, which amended bill is in the words and figures following, to wit:

TERRITORY OF NEW MEXICO, {
County of Colfax. }

In the District Court of the First Judicial District, Sitting in the County of Colfax, Territory of New Mexico, for Trial of Causes Arising under the Laws of the Territory, at the August Term, A. D. 1870.

73 To the Hon. Joseph G. Palen, chief justice of the supreme court of said territory and judge of the first judicial district court thereof, in chancery sitting:

Your petitioners, Lucien B. Maxwell, of Cimarron, in the county of Colfax and Territory of New Mexico aforesaid, and Luz B. Maxwell, his wife, and The Maxwell Land Grant and Railway Company, a corporation duly created, organized and established under the laws of said Territory of New Mexico and having an office and place of business at said Cimarron, bring this their bill of complaint against Guadalupe Thompson, late Guadalupe Bent, administratrix of the estate of Alfred Bent and her husband, George Thompson, Charles Bent, Juliana Bent and Alberto Silas Bent, the last three all being minors and all residents of the county of Las Animas, in the Territory of Colorado, and thereupon your orators complain and say that heretofore, to wit, on or about the eleventh day of January, A. D. eighteen hundred and forty-one the Republic

of Mexico, in due form of law, granted to Charles Beaubien and Guadalupe Miranda, citizens of said Republic, a tract of lands, situate in the then province or department of New Mexico, constituting a part of the said Republic, which tract of land was described as follows, namely: Commencing on the east of Red river, a mound was erected, from whence following in a direct line in an easterly direction to the first hills another mound was erected at the point thereof and continuing from south to north on the line nearly parallel with Red river, a third mound was erected on the north side of the Chicorica or Chocuaco mesa (table-land); thence turning towards the west and following along the side of said table-land of the Chacuaco to the summit of the mountain where the fourth mound was erected; from thence following along the summit of said main ridge from the north to the south, to the Cuesta del Osha, one hundred varas north of the road from Fernandez to the Laguna Negra, where the fifth mound was erected; from thence

74 turning again to the east towards Red river and following along the southern side of the table-lands of the Rayado and those of the Gonzalitos, on the eastern point of which the sixth mound was erected; from thence following in a northerly direction to the west side of Red river, opposit the first, where the last and seventh mound was erected, all of which will more fully appear by reference to certified copies of said grant and act of possession herewith filed and made a part of this bill and marked "C" and "D." That the said grant was duly accepted by the said grantees who thereupon immediately entered into possession of the premises, and the said grantees and those holding under them have ever since maintained, and still do maintain, exclusive, quiet and peaceable possession thereof.

That afterwards and on or about the twenty-first day of June, A. D. 1860, the said grant was duly ratified and confirmed by an act of Congress of the United States in pursuance of the provisions in that behalf of the treaty between the United States and Mexico, known as the treaty of Guadalupe Hidalgo. That by sundry conveyances and purchases and by inheritance, on the twenty-ninth day of May, A. D. 1865, the said Lucien B. Maxwell and wife had become and then were the sole owner in fee-simple, and undivided, of the whole of the aforesaid granted premises, with the exception of a few small parcels heretofore sold by them to other persons, who had no interest in the object of this suit, nevertheless subsequent to said last-mentioned date, certain deeds were executed to the said Maxwell in confirmation of purchases previously made by him, and if it should hereafter become necessary the complainants beg leave of the court to set forth more specifically and in detail the origin of the title of the said Maxwell and wife.

75 That afterwards, to wit, on or about the 30th day of April, A. D. 1870, the said Lucien B. Maxwell and wife being as aforesaid still seized and possessed of the said premises, for a valuable consideration sold and conveyed the premises to the said Maxwell Land Grant and Railway Company by a warranty deed with full covenants, reserving and excepting the home ranch so called,

consisting of about one thousand acres of land and certain other small parcels of land and mineral rights to which said deed, if it shall become necessary, the complainants beg leave to refer, as will appear by reference to a certified copy of said deed made a part of this bill and marked Ex. "E."

The complainants further say that heretofore, to wit, on or about the 12th day of September, 1859, Alfred Bent, then in full life but since deceased, Estefana Hicklin and Alexander Hicklin her husband, Teresina Bent, alias Teresa T. Bent, and Aloys Scheurick, her husband, and also by her next friend, Ceran St. Vrain, commenced a suit in the district court of the said Territory of New Mexico, for the county of Taos, in the first judicial district against the said Lucien B. Maxwell and Luz Beaubien Maxwell his wife, and sundry other persons who have now no interest in the object of this suit and who are therefore not made parties thereto.

The complainants further say that diligent search has been made for the pleadings in the said suit of Alfred Bent and others, but the said pleadings cannot be found among the records of this court or elsewhere, and the complainants therefore aver that the said pleadings are lost or destroyed, but the complainants are informed and believe and therefore aver, that in the petition in the said suit of Alfred Bent and others, it was in substance alleged that by a parole agreement made between one Charles Bent, the father of the said Alfred Bent, Estefana Hicklin, *née* Estefana Bent, Teresina Scheurick, *née* Teresina Bent, and the said original grantees, Charles

76 Beaubien and Guadalupe Miranda, the said Charles Bent became and was equitably entitled to one undivided fourth part of the aforesaid granted premises, and that to the extent of such undivided one-fourth part, the said Beaubien and Miranda and those holding under them were trustees of the legal title for the said Charles Bent in his lifetime, that no conveyance of the said undivided interest aforesaid had been made to the said Charles Bent in his lifetime, that the said Charles Bent died intestate, and that the said Alfred Bent, Estefana Hicklin and Teresina Scheurick were the children and only heirs of the said Charles Bent, and that the defendants to the extent that they, severally and respectively, held legal title to the premises or parts thereof, continued to hold such legal title in trust for said alleged children of Charles Bent to the extent respectively of one undivided fourth part, and among other things, the said complainants prayed for a partition of the premises upon the footing of the claim as set forth in said petition.

That the parties respectively appeared in said cause by their respective counsel and the defendants filed their answer, which the complainants are informed and believe was in substance a denial of the equity set up in the plaintiff's petition. The said cause came by legal continuances to the term of said court, held within and for the county of Taos, on the 29th day of May, 1865, when and where the respective parties again appeared and such proceedings were had, that an interlocutory decree was made and entered in and by which it was in substance decreed and declared that in the lifetime

of the said Charles Bent, the said Beaubien and Miranda held the legal title to one undivided fourth part of the said estate in trust for the said Charles Bent, who in equity was entitled to the said undivided one-fourth part thereof, that the said children of Charles Bent, upon the decease of their said father, had legal capacity to succeed to and did succeed to the said equitable interest of
 77 their father in the premises as his only heirs-at-law. And it was also adjudged and decreed that a partition should be made between the said children of Charles Bent and Lucien B. Maxwell, who had succeeded to the interest and estate of the said Miranda, as also certain daughters and a son of the said Beaubien, mentioned in the said decree, and the said Alfred, Teresina and Estefana, children of the said Charles Bent, and in and by the said decree commissioners were appointed and directions given for making said partition, which said decree the complainants pray may be taken to be a part of this petition in the same manner as if the same were herein set forth at length, a copy of which is herewith filed and marked Exhibit "A."

Amendment. The complainants further say that afterwards, in the lifetime of the said Alfred Bent, to wit, on or about the first day of October, A. D. eighteen hundred and sixty-five, plaintiffs then all being in full life, and all *sui juris*, and having full legal capacity to contract, and before any steps had been taken to carry the said decree into execution, an agreement by way of a compromise of what was still regarded as a doubtful and uncertain claim on the part of the said complainants, was entered into by and between the said Lucien B. Maxwell and each of the said plaintiffs, whereby in consideration of the sum of eighteen thousand dollars, to be paid by the said Maxwell to the said plaintiffs, they the said plaintiffs, and each of them, agreed with the said Maxwell to release and discharge the premises, and every part thereof, and also, the said Maxwell and wife from the said trust or equitable claim, and in confirmation of such release and discharge, to convey to him, the said Maxwell, all their right, title and interest respectively in and to the said premises, the sole object and purpose of the said agreement being to confirm the title of the said Maxwell and wife
 78 to the premises, and to release and discharge the same from the said trust or equitable claim set up by the plaintiffs.

The complainants further say that before the performance and full execution of the said agreement could be had, to wit: on or about the fifteenth day of December, A. D. eighteen hundred and sixty-five the said Alfred Bent, one of the plaintiffs, deceased, leaving three minor children and heirs, namely the said Charles Bent, Juliana Bent and Alberto Silas Bent. That afterwards, at the term of said court, held in and for the county of Taos, on the 9th day of April, 1866, such proceedings were had in the said cause, that the death of the said Alfred Bent, was suggested upon the record and thereupon his said minor children and heirs, Charles, Juliana and Alberto Silas, were made parties plaintiff and their mother Guadalupe Bent, widow of said Alfred Bent, was then and there appointed guardian *ad litem* for said minors respectively.

Thereupon such other proceedings were had and held that it was made to appear to the said court that the aforesaid agreement between the plaintiffs and Lucien B. Maxwell for the extinguishment of the said claim or trust had been made, and that in consequence thereof, the said interlocutory decree for a partition had not been carried into effect and executed, and thereupon at the request and with the consent of the solicitors for the respective parties, plaintiff and defendant, it was further ordered by the said court that the interlocutory decree aforesaid declaring the said trust and equity in favor of the plaintiffs and directing a partition, and all orders made under and by virtue of the said decree should be and they were set aside. And it was then, upon like request and agreement, further ordered and decreed that the said Lucien B. Maxwell should pay to the plaintiffs in said suit the said sum of eighteen thousand dollars to be divided among them as follows, namely: to the said Scheurick and Teresina Bent, his wife, one-third thereof, to the said

79 Hicklin and Estefana Bent, his wife, one-third thereof, and to and among the said children of Alfred Bent, the remaining third part equally, the share of each to be paid into the hands of their said mother and guardian *ad litem*, and upon like request and agreement, it was then and there further ordered and decreed by the court that the said Alexander Hicklin and Estefana Bent, his wife, and the said Aloys Scheurick and Teresina Bent, his wife, and the said Guadalupe Bent, guardian *ad litem*, as aforesaid, in the name of said Charles, Juliana and Alberto Silas Bent, should within ten days from the date of said decree severally execute and deliver to the said Lucien B. Maxwell, good and sufficient conveyances of all their right, title interest, etc., in the premises.

The complainants further say, that afterwards, to wit, on or about the 3d day of May, A. D. 1866, the said Lucien B. Maxwell paid the said sum of eighteen thousand dollars to the persons and in the proportion as directed by the said decree, except that the sum of six thousand dollars was paid to the said Guadalupe Bent as administratrix of the said estate of the said Alfred Bent and not as guardian *ad litem* for said infants, and on the 3d day of May, 1866, the said Scheurick and wife executed and delivered to the said Maxwell a conveyance of one-third interest in the premises, and on the 31st day of May, the said Hicklin and wife executed and delivered to

the said Maxwell a conveyance of all their right, title and interest in the "premises, and on the 3d day of May, eighteen hundred and sixty-six the"

said Guadalupe Bent undertook to convey to the said Maxwell all the right, title and interest in the premises of the said minor children of Alfred Bent. To this decree and deeds the plaintiffs also beg leave to refer from time to time as it shall become necessary in

80 the same manner as if the same were herein set out at length, certified copies of which are herewith filed and marked Exhibits "B," "F," "G" and "H," and prayed to be taken up as a part of this bill.

The complainants further say, that by the said agreement made between the said Lucien B. Maxwell, and the plaintiffs in the suit

aforesaid, in the lifetime of said Alfred Bent, one of the said plaintiffs, all of the equitable right, title and interest, if any, of the said Charles Bent, and of the said plaintiffs derived from the said Charles Bent, became and was transferred to and vested in the said Lucien B. Maxwell, and extinguished, and the equitable right, title and interest, if any, of the said plaintiffs, and each of them, and all trusts, if any, existing in their favor, in the premises was and is wholly extinguished and terminated, and the premises and every part thereof, and all persons holding the same or any part or parcel thereof became and were and are free and discharged of and from the said trust, or equitable interest or claim, if any, of the said plaintiffs in the premises.

The complainants further say that the said agreement was fully carried out in good faith by the said surviving plaintiffs, Teresina Bent and Estefana Bent, and their husbands, respectively, by the execution and delivery to the said Maxwell of the conveyance hereinbefore referred to, and so far as the same could lawfully be done under and by virtue of the said order and the conveyance of Guadalupe Bent in behalf of the said minor children of Alfred Bent, deceased, under and in pursuance of the same, the said trust or equitable interest or claim, if any, of the said Alfred Bent and his said minor children and heirs, was wholly terminated and extinguished, but the complainants say that they are advised that by reason of certain errors and irregularities in the proceedings in the suit aforesaid, it is doubtful in law whether as against the said minor children and heirs of said Alfred Bent, it sufficiently

81 appears that they have no equitable or other interest in the said premises and that such doubt creates a cloud upon the title to the premises, which can only be removed by the interposition and decree of this court.

The complainants further says that among the errors and irregularities in the proceedings in said suit, and which create a cloud upon the title to the premises are, as they are advised, the following, namely: It does not appear (as the fact is), that an agreement for the sale of the equitable interest of the said Alfred Bent in the premises was made between the said Lucien B. Maxwell and the said Alfred Bent in the lifetime of the latter. That the said interlocutory decree should not have been set aside, but the same should have been modified.

That the money paid by the said Lucien B. Maxwell for the supposed equitable interest of the said Alfred Bent, and to extinguish the same, should have been directed to be paid to the personal representatives of the said Alfred Bent, and not to the guardian *ad litem*, of his minor children and heirs, and that upon such payment being made, the court should by a proper decree have decreed and adjudged the said trust or equitable claim or interest to be extinguished, and that the premises, and every part and parcel thereof, should be held free and discharged of said trust, and that the court had no jurisdiction to order and decree a conveyance by the guardian *ad litem* of the said infants in the name of the said infants, of any interest which they might appear to have in the premises.

The complainants further say that in fact the share of the said Alfred Bent in the said eighteen thousand dollars, namely, six thousand, have passed into the hands of the personal representatives of the said Alfred Bent, namely, the said Guadalupe Thompson, late Guadalupe Bent, and widow of the said Alfred Bent, but now the wife of said George Thompson, "who, on the 12th day of April, A. D. eighteen hundred and sixty-six, was duly appointed administratrix of the estate of said Alfred Bent, by the Hon. Pedro Sanches, judge of the court of probate within and for the county of Taos, in the Territory of New Mexico."

The complainants further state that the said agreement between the said Lucien B. Maxwell and the said Alfred Bent, in his lifetime, Teresina Bent and Estefana Bent, and their respective husbands, has been fully performed by the said Lucien B. Maxwell, and that the complainants are therefore entitled to hold the premises free and discharged from the said trust, as well as against the heirs of Alfred Bent, deceased, as against all other persons.

In tender consideration of the premises, and inasmuch as said complainants are without complete and adequate remedy by the strict rules of the common law, they refer all these matters and things to your honor's court in chancery, where the same are properly cognizable and relievable, and ask that said defendants and each of them may be required to the best of their information, knowledge and belief, full, true and perfect answers make to all and singular the allegations in this petition contained and the premises being found for complainants they pray "that for the aforesaid errors of law apparent on the face of the said decree of the 10th of September, 1866, the same may be reviewed and reversed in the points herein complained of and further that your honor will order, adjudge and decree that the trust aforesaid be terminated and extinguished as against the defendants; that the defendants have no interests in or title to the premises equitable or otherwise, and that the plaintiffs respectively shall hold the premises according to the respective interest therein, free and discharged of all trusts in favor of the defendants and any and all persons claiming under them and grant to the complainants such other and further relief as may be just and equitable."

May it please your honor to grant unto complainants the writ of subpoena to be directed to Guadalupe Thompson, administratrix of Alfred Bent, deceased, and George Thompson, Julianio Bent and Charles Bent and Alberto Silas Bent commanding them and each of them, on a day certain, and under a certain penalty therein inserted, to appear at the next regular term of the court for the county of Colfax, then and there to answer the premises and abide the order and decree of the court.

W. W. McFARLAND,
S. B. ELKINS,
Solicitors for Complainants.

And afterwards, to wit: on the fifteenth day of February, A. D. 1873, the said defendants, Guadalupe Thompson and

George W. Thompson, filed in the clerk's office of said district court their answer to amended bill of complaint, which answer is in the words and figures following, to wit:

TERRITORY OF NEW MEXICO, }
First Judicial District, County of Colfax. }

District Court, March Term, 1873.

85 LUCIEN B. MAXWELL, LUZ B. MAXWELL, His Wife, and THE
 MAXWELL LAND GRANT AND RAILWAY COMPANY
 vs.

GUADALUPE THOMPSON and GEORGE W. THOMPSON, Her Husband,
 and Charles Bent, Juliana Bent, and Robert Silas Bent, Minor
 Children and Heirs to Alfred Bent, Deceased. }

The joint and several answer of the said Guadalupe Thompson and George W. Thompson, her husband, two of the defendants, to the aforesaid amended bill of complaint against these respondents and three minor children and heirs, as above mentioned.

These respondents having previously filed their answer to the original bill filed against them in the above-entitled cause, and the said complainants having since the filing of said answer, to wit: on or about the 4th day of January, A. D. 1873, obtained leave of the court to amend their said bill in several particulars, and leave to said respondents to answer to said amendments being also obtained, the said respondents to answer to said amendments, or to such of them as may require an answer, answering, say that they deny that on the third day of May, 1866, or at any other time, the said Guadalupe Bent (now Thompson) undertook to convey to the said Maxwell all the right, title and interest in the premises of the said minor children of Alfred Bent.

These respondents also deny that the said Guadalupe Bent (now Thompson) was, on the twelfth day of April, A. D. eighteen hundred and sixty-six, duly appointed administratrix of the estate of the said Alfred Bent by the Hon. Pedro Sanchez, judge of
 86 the court of probate within and for the county of Taos, in the Territory of New Mexico, all of which matters and things these respondents are ready to aver and prove as this court shall direct, and pray to be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

GUADALUPE THOMPSON AND
 GEORGE W. THOMPSON,

Her Husband,

By R. H. TOMPKINS, *Their Solicitor.*

And afterwards, to wit: on the day and year last aforesaid, the said infant defendants, by their guardian *ad litem*, filed in the clerk's office of said district court, their answer to amended bill aforesaid, which answer is in words and figures following, to wit:

TERRITORY OF NEW MEXICO, {
County of Colfax. }

In the District Court of the First Judicial District, Sitting in and for
the County of Colfax. In Chancery.

LUCIEN B. MAXWELL, LUZ B. MAXWELL, and THE MAXWELL }
LAND GRANT AND RAILWAY COMPANY }

vs.

GUADALUPE THOMPSON, GEORGE W. THOMPSON, CHARLES BENT, }
JULIANO BENT, and ALBERTO SILAS BENT. }

The answer of Charles Bent, Juliano Bent, and Alberto Silas Bent,
infants, by George Boyles, their guardian *ad litem*, to the amend-
ments to the bill of complaint in the above-entitled cause.

These defendants answering say, by their guardian *ad litem*, say
they are infants under the age of twenty-one years, and they
87 therefore submit their rights and interests in the matter in
question in this cause to the tender consideration and pro-
tection of this honorable court, and pray strict proof of the matters
and things in said bill and the amendments thereto contained.

CHARLES BENT,
JULIANO BENT, AND
ALBERTO SILAS BENT,
By GEORGE BOYLES,

Their Guardian ad Litem.

February 10th, 1873.

And afterwards, to wit: on the first day of March, A. — 1873, the
said complainants filed in the clerk's office of said district court,
their replication to the answers of said defendants, which replication
is in words and figures following, to wit:

In the District Court, First Judicial District, County of Colfax,
March Term, 1873.

LUCIEN B. MAXWELL *et als.* }
vs. }
GUADALUPE THOMPSON *et als.* }

The replication of Lucien B. Maxwell, Luz B. Maxwell, and the
Maxwell Land Grant and Railway Company to the answers of
Guadalupe Thompson, George W. Thompson, Charles Bent,
Juliana Bent, and Alberto Silas Bent, minors, etc., to the amend-
ments of the bill of complaint filed by complainants.

These repliants, saving and reserving to themselves all and all
manner of advantage of exception which may be had and taken to
the manifold errors, uncertainties and insufficiencies of the answer
of said defendants to said amendment of said bill of com-
88 plaint for replication thereunto, *saieth* that they *doth* and will
aver, maintain and prove their said bill to be true, certain

and sufficient in the law to be answered unto by the said defendants, and that the — said defendants are very uncertain, evasive and insufficient in the law to be replied unto by *this* repliant; without that that any other matter or thing in the said answer contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed, or avoided, *transferred*, or denied, is true; all which matters and things these repliants are ready to aver, maintain and prove, as this honorable court shall direct, and humbly pray, as in and by said amended bill they have already prayed.

S. B. ELKINS,
Solicitors for Complainants.

89 And now to wit, on the day and year first aforesaid, the following decree is made and entered in this cause, which decree is in the words and figures following, to wit:

THE MAXWELL LAND GRANT AND RAILWAY COMPANY, Lucien B. Maxwell, and Luz B. Maxwell, His Wife,

vs.

GUADALUPE THOMPSON, Administratrix of the Estate of Alfred Bent, Deceased; George Thompson, Her Husband, and George Boyles, Guardian "*ad Litem*" of Charles Bent, Alberto Silas Bent, and Julian Bent.

45.

Chancery.

This cause coming on to be heard on the pleadings and proofs, upon reading the same, as also the stipulation heretofore filed in this cause, signed by the solicitors for the respective parties, and dated the eighth day of April, A. D. one thousand eight hundred and seventy-three, wherein and whereby it is agreed that the above-entitled cause be submitted on the pleadings, exhibits and proofs to the judge in vacation and that a decree in said cause may be entered in vacation and at chambers and that either should have the right to apply for and perfect an appeal to the supreme court of the Territory of New Mexico at any time after the entering of said decree, at chambers, and before the close of the next regular term of this court which shall be held in the county of Colfax in said Territory, and after hearing S. B. Elkins and Thomas B. Catron, solicitors for the complainants, and Messrs. Boyles and Thomkins, solicitors — the defendants, and on deliberation being had, it appears to the court, and the court doth find and declare that the decree of the district court for the county of Taos rendered on the tenth day of September, A. D. one thousand eight hundred and sixty-six, is erroneous so far as it sets aside the provisions of the interlocutory decree of said court, rendered on the twenty-ninth day of May, A. D. one thousand eight hundred and sixty-five, determining that Alfred Bent, Estefana Hicklin, and Teresina, otherwise Teresa T. Bent, were the natural children of Charles Bent, and became and were at the time of his decease the true and lawful heirs of his body in this Territory, with full power,

rights and authority to inherit, succeed to, and receive the estate, property, rights and interests of property of the said Charles Bent, in the Territory of New Mexico, and that as such children and heirs they were justly and lawfully entitled to have, maintain, recover, possess and enjoy all the rights, interest and estate which in law or equity belonged or pertained to the said Charles Bent at the time of his decease of, in or to the lands, real estate, or grant described and set forth in said interlocutory decree.

It is also erroneous, so far as it sets aside the provision of
91 said interlocutory decree, establishing that at the time of the decease of the said Charles Bent he was justly and equitably entitled to and seized of one undivided fourth part of the tract of land, real estate, or grant, described in said interlocutory decree.

It is also erroneous, so far as it sets aside the provisions of said interlocutory decree, whereby it is determined that the said Alfred, Estefana and Teresina Bent, upon the decease of the said Charles Bent, inherited, succeeded to and became seized of the said undivided one-fourth part, interest and estate, which belonged or pertained to the said Charles Bent, in law and equity, in and to the land or real estate, described in said interlocutory decree, and that the said Alfred, Estefana, and Ter-sina Bent, became and were fully and absolutely entitled to and seized of the undivided one-fourth part of the interest and estate of the said tract of land or grant.

It is also erroneous, so far as it sets aside the provisions of said interlocutory decree, whereby it determines, declares, establishes and confirms to the said Alfred, Estefana and Teresina Bent, the said undivided one-fourth part in and to the said tract or grant of land or real estate to them and to their heirs and assigns forever, with full and perfect right, power and authority to possess and enjoy the same.

It is also erroneous as far as it directs that the said Guadalupe Bent, guardian *ad litem* for Charles Bent, Julian Bent and Alberto Silas Bent, children and minor heirs of the said Alfred Bent, deceased, make, execute and deliver to the said Lucien B. Maxwell, good and sufficient deeds of conveyance of all right, title, interest, estate, claim and demand of, in and to the land named in said decree.

92 And it further appears to the court, and the court doth further find and declare, that *the* pending the original suit in which said decree of date, the tenth day of September, A. D. one thousand eight hundred and sixty-six was rendered, and after the death of Alfred Bent, an agreement by way of compromise was made by the adult parties thereto, for the settlement of the same; and that the terms of said compromise and agreement were considered advantageous to the said infants, and were accepted by the court for and on their behalf, as is evidenced by the decree attempting to carry into full effect the terms of said compromise.

And it also appears to the court, and the court doth find and declare, that the sums by the terms of said agreement the said Lucien B. Maxwell was to pay to the said infants, have been received by them or their mother for their benefit, whereby and by

reason of said agreement and compromise, all the equitable right, title, interest and claim of the said infants, Julian Bent, Charles Bent and Alberto Silas Bent in and to the premises in question, became and was wholly terminated and extinguished, and said lands and premises became and were thereby discharged from the trust, and the said trust terminated and extinguished.

It is therefore ordered, adjudged and decreed, and this court, by virtue of the power and authority therein vested, doth hereby order, adjudge and decree, that said decree of the district court for the county of Taos, rendered on the tenth day of September, A. D. one thousand, eight hundred and sixty-six, in so far as the same is hereinbefore declared to be erroneous, be and the same is hereby reversed, vacated and set aside.

93 It is further ordered, adjudged and decreed that the said premises be, and that they now are held and possessed by the said Maxwell Land Grant and Railway Company, free and discharged of any and all trusts, rights, title or interest in or to the same, in favor of or pertaining to the said Guadalupe Thompson, either in her own right, or as administratrix of the estate of the said Alfred Bent, deceased, the said George Thompson, her husband, the said Charles Bent, Alberto Silas Bent and Julian Bent, or any or either of them.

It is further ordered, adjudged and decreed, that the complainants pay the costs herein taxed at — dollars, as also the sum of six hundred dollars as a counsel fee to the guardian *ad litem* of the infant defendants herein, that sum having been agreed upon by the solicitors of the respective parties.

And afterwards, to wit: on the fourth day of September, A. D. 1873, the defendants filed in the clerk's office of said district court the following motion and affidavit for an appeal, which motion and affidavit are in the words and figures following, to wit:

TERRITORY OF NEW MEXICO, }
County of Colfax. }

District Court, August Term, 1873.

LUCIEN B. MAXWELL and WIFE and THE MAXWELL	} In Chancery.
LAND GRANT COMPANY	
vs.	
GUADALUPE THOMPSON; GEORGE THOMPSON, Her	}
Husband, <i>et al.</i>	

94 The defendants in the above-entitled cause, by their solicitors pray the court to grant them an appeal, in said cause to the supreme court of the Territory.

GEORGE BOYLES AND
R. H. TOMPKINS,
Solicitors for Defendants.

TERRITORY OF NEW MEXICO, }
County of Colfax, } ss:

George W. Thompson, one of the defendants in the above-entitled cause, being duly sworn, states that the appeal in the above cause is not taken for the purpose of vexation or delay, but because this affiant believes that the appellants are aggrieved by the judgment or decision of the court.

G. W. THOMPSON.

Sworn to and subscribed before me this 4th day of September, 1873.

R. J. PALEN, *Clerk.*

And afterwards, to wit: at a regular term of said district court, held within and for the county of Colfax aforesaid, on the day and year last aforesaid, on the sixth day of said term, the following was made and entered in this cause in the words and figures following, to wit:

THE MAXWELL LAND GRANT AND RAILWAY COM-
 pany, Lucien B. Maxwell, and Luz B. Maxwell,
 His Wife,

vs.

GUADALUPE THOMPSON, Administratrix of the
 Estate of Alfred Bent, Deceased; George Thomp-
 son, Her Husband, and George Boyles, Guardian
ad Litem of Charles Bent, Alberto Silas Bent, and
 Julian Bent.

45. Chancery.

95 On motion of Mr. Boyles, of counsel for defendants, it is ordered that an appeal be allowed from the decree rendered in the cause to the supreme court of the Territory, the defendants having filed the affidavit and security required by law.

And afterwards, to wit, on the same day and year last aforesaid, the defendants filed in the clerk's office of said district court their appeal bond, which bond is in the words and figures following, to wit:

Know all men by these presents, that we, George W. Thompson as principal, and F. P. Ernest and J. B. Dawson as securities, are held and firmly bound unto Lucien B. Maxwell and Luz B. Maxwell and the Maxwell Land Grant and Railway Company, in the penal sum of five hundred dollars, good and lawful money of the United States, for the payment of which well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally by these presents.

The condition of the above obligation is such that whereas, in a certain cause pending in the district court for the county of Colfax and Territory of New Mexico on the chancery side of said court wherein Lucien B. Maxwell and Luz B. Maxwell, his wife, and The Maxwell Land Grant and Railway Company are complainants, and

Guadalupe Thompson and George W. Thompson, administratrix and administrator of the estate of Alfred Bent, deceased, and George Boyles, guardian *ad litem* of Charles Bent, Alberto Silas Bent and Julian Bent infants, are respondents, a decree was rendered on the eight day of April, A. D. 1873, by the judge of said court, from which said decree the said respondents hath prayed an appeal to the supreme court of the Territory of New Mexico; now, if the said respondents shall prosecute their said appeal with effect
 96 and without delay, and shall pay whatever judgment may be rendered against them for costs on the hearing or dismissal of said appeal, then this obligation to be null and void, otherwise to be and remain in full force and effect.

Witness our hands and scrolls as seals, this fourth day of September, A. D. 1873.

G. W. THOMPSON. [SEAL.]
 F. P. ERNEST. [SEAL.]
 J. B. DAWSON. [SEAL.]

DISTRICT COURT, }
County of Colfax. }

Personally appeared before me, this fourth day of September, A. D. 1873, G. W. Thompson, F. P. Ernest and John B. Dawson, to me personally known to be the persons who made and executed the foregoing bond and whose names are attached thereto, and severally acknowledge that they executed the same for the uses and purposes therein mentioned.

R. J. PALEN,
Clerk First Judicial District Court of New Mexico.

TERRITORY OF NEW MEXICO, }
First Judicial District, County of Colfax, } ss :

J. B. Dawson and F. P. Ernest, sureties on the foregoing bond, personally appeared before me this fourth day of September, A. D. 1873, and severally made oath that they are each householders in the county of Colfax, and worth the sum of five hundred dollars over and above all just debts and liabilities.

R. J. PALEN,
Clerk First Judicial District Court.

97

Part second.

Transcript of Record.

THE MAXWELL LAND GRANT AND RAILWAY }
 COMPANY and LUZ B. MAXWELL }
 vs. }

GUADALUPE THOMPSON, Administratrix of } Chancery. No. 356.
 the Estate of Alfred Bent, Deceased; George }
 W. Thompson, Her Husband; Charles Bent, }
 Juliano Bent, and Alberto Silas Bent. }

Be it remembered, that heretofore, to wit: on the 25th day of February, A. D. 1880, there was filed in the clerk's office of the first

(now fourth) judicial district court of the Territory of New Mexico a mandate which said mandate is in the words and figures as follows, to wit :

THE UNITED STATES OF AMERICA :

The President of the United States of America to the honorable the judge of the district court of the first judicial district — the Territory of New Mexico, Greeting :

Whereas lately in the district court of the first judicial district of the Territory of New Mexico, before you, or some hon. judge of said court, in a cause in chancery between The Maxwell Land Grant and Railway Company, Lucien B. Maxwell and Luz B. Maxwell his wife, complainants, and Guadalupe Thompson, administratrix of the estate of Alfred Bent deceased, George Thompson her husband, and George Boyles, guardian *ad litem* of Charles Bent, Alberto Silas

98 Bent and Julian Bent, respondents, wherein the judgment of the said district court entered in said cause on the fourth day of September, A. D. 1873, is in the words and figures, following, namely :

THE MAXWELL LAND GRANT AND RAILWAY
Company, Lucien B. Maxwell, and Luz B.
Maxwell, His Wife,

vs.

GUADALUPE THOMPSON, Administratrix of the
Estate of Alfred Bent, Deceased ; George
Thompson, Her Husband, and George
Boyles, Guardian *ad Litem* of Charles Bent,
Alberto Silas Bent, and Juliano Bent.

Chancery. No. 45.

This cause coming on to be heard on the pleadings and proofs, upon reading the same, as also the stipulation heretofore filed in this cause, signed by the solicitors for the respective parties, and dated the 8th day of April, A. D. one thousand and eight hundred and seventy-three, wherein and whereby it is agreed that the above-entitled cause be submitted on the pleadings, exhibits and proofs to the judge in vacation, and that a decree in said cause may be entered in vacation and at chambers, and that either should have the right to apply for and perfect an appeal to the supreme court of the Territory of New Mexico, at any time after the entering of said decree at chambers, and before the close of the next regular term of the court which shall be held in the county of Colfax in said Territory, and after hearing, S. B. Elkins and Thomas B. Catron, solicitors for the complainants, and Messrs. Boyles and Thompkins, solicitors for the defendants, and due deliberation being had ; it appears to the court and the court doth find and declare that the decree of the district court for the county of Taos, rendered on the tenth day of September, A. D. one thousand eight

99 hundred and sixty-six, is erroneous so far as it sets aside the provisions of the interlocutory decree of said court, rendered

on the twenty-ninth day of May, A. D. one thousand eight hundred and sixty-five, determining that Alfred Bent, Estefana Hicklin and Teresina Cothm (otherwise) Teresina T. Bent, were innatural children; and became and were at the time of his decease, the true and lawful heirs of his body in this Territory, with full power, rights and authority to inherit, succeed to and receive, the estate, property, rights and interests of property of the said Charles Bent in the Territory of New Mexico, and that as such children and heirs, they were justly and lawfully entitled to have, maintain, recover, possess and enjoy all the rights, interest and estate which in law or equity belonged or pertained to the said Charles Bent at the time of his decease, of, in and to the lands, real estate or grant described and set forth in said interlocutory decree.

It is also erroneous, so far as it sets aside the provisions of said interlocutory decree, establishing that at the time of the decease of the said Charles Bent, he was justly and equitable entitled to and seized of one undivided fourth part of the tract of land, real estate or grant described in said interlocutory decree.

It is also erroneous so far as it sets aside the provisions of said interlocutory decree, whereby it is determined that the said Alfred, Estefana and Teresina Bent, upon the decease of the said Charles Bent inherited, succeeded to and became seized of the said undivided one-fourth part interest and estate, which belonged or pertained to the said Charles Bent in law and equity in and to the land or real estate described in said interlocutory decree, and
 100 that the said Alfred, Estefana and Teresina Bent became and were, fully and absolutely entitled to and seized of the undivided one-fourth part of the interest and estate of the said tract of land or grant.

It is also erroneous, so far as it sets aside the provisions of said interlocutory decree, whereby it determines, declares, establishes and confirms to the said Albert, Estefana and Teresina Bent the said undivided one-fourth part in and to the said tract or grant of land, or real estate, to them, and to their heirs and assigns, forever, with full and perfect right, power and authority to possess and enjoy the same.

It is also erroneous, so far as it directs that the said Guadalupe Bent guardian *ad litem* for Charles Bent, Julian Bent and Alberto Silas Bent children and minor heirs of the said Alfred Bent, deceased, make execute and deliver to the said Lucien B. Maxwell good and sufficient deeds of conveyance of all right, title, interest, estate, claim and demand of, in and to the lands named in said decree.

And it further appears to the court, and the court doth further find and declare, that pending the original suit in which said decree of date the tenth day of September A. D. one thousand eight hundred and sixty-six was rendered, and after the death of Alfred Bent, and agreement, by way of compromise, was made by the adult parties thereto, for the settlement of the same; and that the terms of said compromise and agreement, were considered advantageous to the said infants, and were accepted by the court for and on their

behalf, as is evidenced by the decree attempting to carry into full effect, the terms of said compromise.

101 And it also appears to the court, and the court doth find and declare, that the sums, which by the terms of said agreement, the said Lucien B. Maxwell was to pay to the said infants, have been received by them or by their mother, for their benefit, whereby, and by reason of said agreement and compromise, all the equitable right, title, interest and claim of the said infants Julian Bent, Charles Bent, and Alberto Silas Bent in and to the premises in question, became and was wholly terminated and extinguished and said lands and premises became and were thereby, discharged from the trust, and the said trust terminated and extinguished.

It is therefore ordered, adjudged and decreed, and this court by virtue of the power and authority therein vested, doth hereby order, adjudge and decree that said decree of the district court, for the county of Taos, rendered on the tenth day of September, A. D., one thousand eight hundred and sixty-six, in so far as the same is heretofore declared to be erroneous, be, and the same is hereby reversed, vacated and set aside.

It is further ordered, adjudged and decreed, that the premises be, and that they now are held and possessed by the said Maxwell Land Grant and Railway Company free, and discharged of any and all trusts, right, title or interest in or to the same, in favor of or pertaining to the said Guadalupe Thompson, either in her own right, or as administratrix of the estate of the said Alfred Bent deceased; the said George Thompson, her husband, the said Charles Bent, Alberto Silas Bent and Julian Bent or any or either of them.

It is further ordered, adjudged and decreed that the complainants pay the costs herein, taxed at — dollars as also the sum of six hundred dollars as a counsel fee to the guardian *ad litem* of the
102 infant defendants herein; that sum having been agreed upon by the solicitors of the respective parties.

On motion of Mr. Boyles of counsel for defendants it is ordered that an appeal be allowed from the decree rendered in this cause to the supreme court of the Territory, the defendants having filed the affidavit and security required by law.

As by the inspection of the transcript of the record of the said district court, which was brought into the supreme court of the Territory of New Mexico, by virtue of an appeal, agreeably to the statute in such case made and provided fully and at large appears.

And whereas at the January term A. D. 1874 the said cause came on to be heard before the said supreme court, on the said transcript of record, when the decree of the said district court for the county of Colfax was affirmed with costs.

And whereas at the October term A. D. one thousand eight hundred and seventy-seven, the said cause came on to be heard before the Supreme Court of the United States, on an appeal from the said supreme court of the Territory of New Mexico, when it was ordered, adjudged and decreed, "that the decree of the supreme court of the Territory of New Mexico rendered in this cause, be and *was* reversed, with costs, and that the said appellants, recover against the

said appellees The Maxwell Land Grant and Railway Company *et al.*, two hundred and seventy-six dollars and eighty-nine cents for their costs herein expended, and have execution therefor." And it was further ordered "that this cause be and the same is hereby remanded to the said supreme court, with directions to allow the complainants to amend their bill as they shall be advised, 103 and with liberty to the defendants to answer any new matter introduced therein, and that all the proofs in the case shall stand as proofs upon any future hearing thereof, with liberty to either party to take additional proofs upon any new matter that may be put in issue by the amended pleadings."

As by the mandate of the Supreme Court of the United States, fully and at large appears.

And whereas at the present January term, A. D. 1880, the said cause came again on to be heard, before the supreme court of the Territory of New Mexico, on the said mandate.

On consideration whereof, it is ordered and adjudged, that this cause be, and the same is hereby remanded for a rehearing, to the first judicial district court of this Territory sitting within and for the county of Colfax, that the same Maxwell Land Grant and Railway Company be allowed to amend its bill as it shall be advised, and file the same in the said first judicial district court, and with liberty to the said defendants or either of them to answer any new matter introduced in said amended bill. It is further ordered that all the proofs in the cause shall stand as proofs on the future hearing with liberty to either party to take additional proofs, upon any new matter that may be put in issue by the amended pleadings.

January 20th, A. D. 1880.

You therefore are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this court, as according to right and justice, and the laws of the Territory of New Mexico ought to be had, the said appeal notwithstanding.

104 Witness the Hon. L. Bradford Prince, chief justice of the supreme court of the Territory of New Mexico, and the seal of said court the 26th day of January A. D. 1880.

[SEAL.]

JNO. H. THOMSON,

Clerk Supreme Court, Territory of New Mexico.

Cost of app-leants in Supreme Court of U. S. \$276.89 ; costs supreme court, Territory of New Mexico, Jan. 1880, clerk \$13.90.

At a regular term of the district court of the first (now fourth) judicial district of the Territory of New Mexico begun and held within and for the county of Colfax, at the court-house in the town of Cimarron, on the fourth Monday of March, in the year of our Lord, one thousand eight hundred and eighty, the same being the 22nd day of March, A. D. 1880.

Present : The Honorable L. Bradford Prince, chief justice of the supreme court of the Territory of New Mexico and judge of the district court of the first judicial district of said Territory ; F. W.

Clancy, clerk of said district court; Peter Burleson, sheriff of said county.

And on the third day of said term, the same being Wednesday, March 24th, A. D. 1880, the following among other proceedings were had, to wit:

TERRITORY OF NEW MEXICO, }
County of Colfax, } ss:

In the District Court for the County of Colfax, Sitting for the
Trial of Causes Arising under the Laws of the Territory,
105 First Judicial District. In Chancery.

At the regular term of the said district court, held pursuant to law, at the court-house in Cimarron in said county of Colfax, on the 24th day of March, A. D. 1880.

THE MAXWELL LAND GRANT AND RAILWAY COMPANY, LUCIEN B. MAXWELL, and LUZ B. MAXWELL, His Wife,	}	No. 92.
vs.		
GUADALUPE THOMPSON, Late GUADALUPE BENT, Admin- istratrix of the Estate of Alfred Bent, Deceased, and George Thompson, Her Husband, and Charles Bent, Juliano Bent, and Alberto Silas Bent, Infants, by George Boyles, Their Guardian <i>ad Litem</i> .	}	

On reading and filing the mandate of the supreme court of the Territory of New Mexico, by which this action, heretofore taken by appeal from this court to the said supreme court, is remanded to this court, with directions to allow the complainants to amend their bill as they shall be advised, and with liberty to the defendants or either of them to answer any new matter introduced therein; and that all the proofs in the cause shall stand as proofs upon any future hearing thereof, with liberty to either party to take additional proofs upon any new matter that may be put in issue by the amended pleadings.

And upon hearing Mr. Lucien Birdseye and Mr. Thomas B. Catron, of counsel for the said complainants, and Mr. H. Meriam, Mr. C. Geaman, and Mr. William D. Lee, of counsel for the said defendants; and this court being fully advised in the premises.

106 It is hereby considered, ordered and adjudged that the said judgment of the said supreme court of the Territory of New Mexico be and the same is thereby made the judgment of this court; and that the judgment or decree heretofore rendered in said action in this court be and the same is hereby reversed with costs; and that the said complainants be and they hereby are allowed to amend their bill of complaint as they shall be advised, and that the said defendants or either of them shall have liberty to answer any new matter which shall be introduced in said amended bill; and that all the proofs in the case shall stand as proofs upon any future hearing thereof, and that either party shall have liberty to take additional proofs upon any new matter

that may be put in issue by the amended pleadings; and that this action here, do settle and proceed in this court, in accordance with the provisions of said mandate and law.

107 And on the day and year last aforesaid there *was* filed in said clerk's office amendments to bill of complaint which are in the words and figures as follows, to wit :

TERRITORY OF NEW MEXICO, }
County of Colfax, } ^{ss :}

In the District Court of the First Judicial District, Sitting in the County of Colfax, Territory of New Mexico, for the Trial of Causes Arising under the Laws of the Territory.

THE MAXWELL LAND GRANT AND RAILWAY COMPANY, LUCIEN B. MAXWELL, and LUZ B. MAXWELL, His Wife,

VS.

GUADALUPE THOMPSON, Late GUADA. BENT, Administratrix of the Estate of Alfred Bent, Deceased, and George Thompson, Her Husband, and Charles Bent, Juliano and Alberto Silas Bent, Infants, by George Boyles, Guardian *ad Litem*.

To the Hon. L. Bradford Prince, chief justice of the supreme court of said Territory, and justice of the first judicial district court thereof, in chancery sitting :

And now the said plaintiffs by special leave of the court first had and obtained, and in accordance with the mandate of the
108 supreme court of this Territory, filed herein, amend their bill of complaint in this action as heretofore amended, and upon which this action was heretofore heard, in this court, and which is exhibited in the transcript of record on the appeal in said action to the Supreme Court of the United States, whereupon this cause has been remanded to this court, in the manner following to wit :

First. In that part of said amended bill which appears in print 1 page 53, original page 161, in said Transcript of Record, after the words, "a copy of which is herewith filed and marked 'Exhibit A' the complainants further say that afterwards," strike out the following words, namely ; "In the lifetime of the said Alfred Bent, to wit: on or about the first day of October, A. D., eighteen hundred and sixty-five, plaintiffs then all being in full life and all *sui juris* and having full legal capacity to contract."

Second. In that part of said amended bill which appears in printed page 53, original page 161, in said Transcript of Record, after the words, "by way of a compromise of what was still regarded as a doubtful and uncertain claim on the part of the said complainants was entered into," strike out the words namely : "by and between the said Lucien B. Maxwell and each of the said plaintiffs."

Third. In that part of said amended bill which appears in printed page 53, original page 161, in said Transcript of Record,

after the words, "eighteen thousand dollars to be paid by the said Maxwell," strike out the following words namely: "to the said plaintiffs, they, the said plaintiffs and each of them;" and in place thereof insert the following words namely: "Plaintiffs."

109 Fourth. In that part of said amended bill which appears in printed page 54, original page 162 in said Transcript of Record, after the words, "The complainants further say that," strike out the following words, namely: "Before the performance and full execution of the said agreement could be had to wit."

Fifth. In that part of said amended bill which appears in printed page 55, original page 166, in said Transcript of Record, after the words, "The complainants further say that by the said agreement made between the said Lucien B. Maxwell and the plaintiffs in the suit aforesaid," strike out the following words, namely: "in the lifetime of the said Alfred Bent, or of the said plaintiffs."

Sixth. In that part of said amended bill which appears in printed page 55, original page 167, in said Transcript of Record, after the words "but the complainants say that they are advised that," strike out the following words, namely: "by reason of certain errors and irregularities."

Seventh. In that part of said amended bill which appears in printed page 55, original pages 167, 168 and 169 in said Transcript of Record, strike out the paragraph in the words and figures following that is to say: "The complainants further say that among the errors and irregularities in the proceedings in said suit, and which create a cloud upon the title to the premises are, as they are advised, the following, namely: it does not appear as the fact is that an agreement for the sale of the equitable interest of the said Alfred Bent in the premises was made between the said Lucien B. Maxwell and the said Alfred Bent, in the lifetime of the latter; that the said interlocutory decree should
110 not have been set aside, but the same should have been modified, that the money paid by the said Lucien B. Maxwell for the supposed equitable interest of the said Alfred Bent, and to extinguish the same should have been directed to be paid the personal representatives of the said Alfred Bent, and not to the guardian *ad litem* of his minor children and heirs, and that upon such payment being made the court should, by a proper decree, have decreed and adjudged the said trust, or equitable claim or interest, to be extinguished, and that the premises and every part and parcel thereof, should be held free and discharged of said trust, and that the court had no jurisdiction to order and decree a conveyance by the guardian *ad litem* of the said infants, in the name of the said infants, or any interest which they might appear to have in the premises."

Eighth. In that part of said amended bill which appears in printed page 56, original page 170, in said Transcript of Record, after the words, "The complainants further state that the said agreement," strike out the following words, namely: "between the said Lucien B. Maxwell and the said Alfred Bent, in his lifetime, Teresina Bent and Estefana Bent, and their respective husbands."

Ninth. In that part of said amended bill which appears in printed page 56, original pages 170 and 171 in said Transcript of Record, after the words, "the premises being found for complainants they pray," strike out the following words, namely: "that for the aforesaid errors of law apparent on the face of the said decree of the 10th day of September, 1866, the same may be reviewed and reversed in the points herein complained of and further."

111 Tenth. Transpose the allegations of the said bill as so amended as aforesaid in such manner that the following allegations which are contained and set forth upon printed page 54, original pages 162 and 163, in said Transcript of Record, namely: "The complainants further say that on or about the 15th day of December, A. D. eighteen hundred and sixty-five the said Alfred Bent, one of the plaintiffs, deceased, at Taos, in said Territory, leaving three minor children and heirs, namely, the said Charles Bent, Julianio Bent and Alberto Silas Bent:

"That, afterwards, at the term of the said court held in and for the county of Taos, on the 9th day of April, 1866, such proceedings were had in the said cause, that the death of the said Alfred Bent was suggested upon the record, and thereupon his said minor children and heirs, Charles, Julianio and Alberto Silas, were made parties plaintiff, and their mother, Guadalupe Bent, widow of said Alfred Bent, was then and there appointed guardian *ad litem* for said minors, respectively," shall be stricken out from the place where the same are now set forth and contained and shall be inserted in the same precise words and figures immediately after the words "a copy of which is herewith filed and marked 'Exhibit A'" as the said words appear in printed page 53, original page 161, in said Transcript of Record.

T. B. CATRON,
LUCIEN BIRDSEYE,
Solicitors for Complainants.

112 And on the day and year last aforesaid there was filed in said clerk's office a bill of complaint as amended which is in the words and figures as follows, to wit:

TERRITORY OF NEW MEXICO, {
County of Colfax. }

In the District Court of the First Judicial District, Sitting in the County of Colfax, Territory of New Mexico, for the Trial of Causes Arising under the Laws of the Territory, at the August Term, A. D. 1870.

To the Hon. Joseph G. Palen, chief justice of the supreme court of said Territory and judge of the first judicial district court thereof, in chancery sitting:

Your petitioners, Lucien B. Maxwell, of Cimarron, in the county of Colfax and Territory of New Mexico, aforesaid, and Luz B. Maxwell,

113 his wife, and The Maxwell Land Grant and Railway Company, a corporation, duly created, organized, and established under the laws of said Territory of New Mexico, and having an office and place of business at said Cimarron, bring this their bill of complaint, against Guadalupe Thompson, late Guadalupe Bent, administratrix of the estate of Alfred Bent, and her husband, George Thompson, Charles Bent, Juliano and Alberto Silas Bent, the last three all being minors and all residents of the county of Las Animas, in the Territory of Colorado; and thereupon your orators complain and say that heretofore, to wit: on or about the eleventh day of January, A. D. eighteen hundred and forty-one, the Republic of Mexico, in due form of law, granted to Charles Beau-bien and Guadalupe Miranda, citizens of said Republic, a tract of land situate in the then province or department of New Mexico, constituting a part of the said Republic, which tract of land was described as follows, namely: Commencing on the east of Red river, a mound was erected, from whence following in a direct line in an easterly direction to the first hills another mound was erected at the point thereof, and continuing from south to north on the line nearly parallel with Red river a third mound was erected on the north side of the Cicorica or Chacuaca mesa, (table-land), thence turning toward the west and following along the side of the said table-land of the Chacuaco to the summit of the mountain, where the fourth mound was erected; from thence following along the summit of said main ridge, from the north to the south, to the Cuesta Del Osha, one hundred varas north of the road from Fernandez to the Laguna Negra, where the fifth mound was erected; from thence, turning again to the east towards Red river, and following along the southern side of the table-lands of the

114 Rayado and those of the Gonzalitos, on the eastern point of which the sixth mound was erected; from thence following in a northerly direction, to the west side of Red river, opposite the first, where the last and seventh mound was erected, all of which will more fully appear by reference to certified copies of said grant and act of possession herewith filed and made part of the bill and marked "C" and "D;" that the said grant was duly accepted by the said grantees who thereupon immediately entered into possession of the premises, and the said grantees and those holding under them have ever since maintained and still do maintain exclusive, quiet and peaceable possession thereof.

That afterwards, and on or about the twenty-first day of June, A. D. 1860, the said grant was duly ratified and confirmed by an act of Congress of the United States, in pursuance of the provisions in that behalf of the treaty between the United States and Mexico, known as the treaty of Guadalupe Hidalgo. That by sundry conveyances and purchases, and by inheritance, on the 29th day of May, A. D. 1865, the said Lucien B. Maxwell and wife had become and then were the sole owners in fee-simple and undivided of the whole of the aforesaid granted premises, with the exception of a few small parcels heretofore sold by them to other persons who had no interest in the object of this suit, nevertheless, subsequent to the

said last-mentioned dates certain deeds were executed to the said Maxwell in confirmation of purchases previously made by him, and if it should hereafter become necessary, the complainants beg leave of the court to set forth more specifically and in detail the origin of the title of the said Maxwell and wife.

115 That afterwards, to wit: on or about the 30th day of April, A. D. 1870, the said Lucien B. Maxwell and wife, being as aforesaid still seized and possessed of the said premises, for a valuable consideration sold and conveyed the premises to the said Maxwell Land Grant and Railway Company, by a warranty deed, with full covenants, reserving and excepting the home ranch, so called, consisting of about one thousand acres of land, and certain other small parcels of land and mineral rights; to which said deed, if it shall become necessary, the complainants beg leave to refer, as will appear by reference to a certified copy of said deed made a part of this bill, and marked "Exhibit E."

The complainants further say that heretofore, to wit, on or about the 12th day of September, 1859, Alfred Bent, then in full life but since deceased, Estefana Hicklin and Alexander Hicklin, her husband, Teresina Bent, alias Teresa T. Bent and Aloys Sheurick, her husband, and also by her next friend, Ceran St. Vrain, commenced a suit in the district court of the said Territory of New Mexico for the county of Taos, in the first judicial district, against the said Lucien B. Maxwell and Luz Beaubien Maxwell, his wife, and sundry other persons, who have now no interest in the object of this suit, and who are therefore not made parties thereto.

The complainants further say that diligent search has been made for the pleadings in the said suit of Alfred Bent and others, but the said pleadings cannot be found among the records of this court or elsewhere, and the complainants therefore aver that the said pleadings are lost or destroyed; but the complainants are informed

116 and believe and therefore aver that in the petition in the said suit of Alfred Bent and others it was in substance alleged that by a parole agreement made between one Charles Bent, the father of the said Alfred Bent, Estefana Hicklin, *née* Estefana Bent, Teresina Sheurick, *née* Teresina Bent, and the said original grantees, Charles Beaubien and Guadalupe Miranda, the said Charles Bent became and was equitably entitled to one undivided fourth part of the aforesaid granted premises, and that to the extent of such undivided one-fourth part the said Beaubien and Miranda and those holding under them were trustees of the legal title for the said Charles Bent in his lifetime; that no conveyance of the said undivided interest aforesaid had been made to the said Charles Bent in his lifetime; that the said Charles Bent died intestate, and that the said Alfred Bent, Estefana Hicklin, and Teresina Scheurick were the children and only heirs of the said Charles Bent, and that the defendants, to the extent that they severally and respectively held legal title to the premises, or part thereof, continued to hold such legal title in trust for said alleged children of Charles Bent, to the extent respectively of one undivided fourth part; and among other

things the said complainants prayed for a partition of the premises upon the footing of the claim as set forth in the said petition.

That the parties respectively appeared in said cause by their respective counsel, and the defendants filed their answer, which the complainants are informed and believe was in substance a denial of the equity set up in the plaintiffs' petition. The said cause came by legal continuances to the term of said court held within and for the county of Taos, on the 29th day of May, 1865, when and where

117 the respective parties again appeared, and such proceedings were had that an interlocutory decree was made and entered, in and by which it was in substance decreed and declared that in the lifetime of the said Charles Bent, the said Beaubien and Miranda held the legal title to one undivided fourth part of the said estate in trust for the said Charles Bent, who in equity was entitled to the said undivided one-fourth part thereof; that the said children of Charles Bent, upon the decease of their said father, had legal capacity to succeed to and did succeed to the said equitable interest of their father in the premises, as his only heirs-at-law. And it was adjudged and decreed that a partition should be made between the said children of Charles Bent and Lucien B. Maxwell, who had succeeded to the interest and estate of the said Miranda, as also certain daughters and a son of the said Beaubien mentioned in the said decree, and the said Alfred, Teresina, and Estefana, children of the said Charles Bent, and in and by the said decree commissioners were appointed, and directions given for making said partition, which said decree the complainants pray may be taken to be a part of this petition in the same manner as if the same were herein set forth at length, a copy of which is herewith filed and marked "Exhibit A."

The complainants further say that on or about the fifteenth day of December, A. D., eighteen hundred and sixty-five, the said Alfred Bent one of the plaintiffs, deceased at Taos, in said Territory, leaving three minor children and heirs, namely, the said Charles Bent, Julian Bent, and Alberto Silas Bent.

That afterwards, at the term of the said court held in and for the county of Taos, on the 9th day of April, 1866, such proceedings 118 were had in the said cause, that the death of the said Alfred Bent was suggested upon the record, and thereupon his said minor children and heirs, Charles, Julian, and Alberto Silas, were made parties plaintiff, and their mother, Guadalupe Bent, widow of said Alfred Bent, was then and there appointed guardian *ad litem* for said minors respectively. The complainants further say that afterwards and before any steps had been taken to carry the said decree into execution, an agreement by way of a compromise of what was still regarded as a doubtful and uncertain claim on the part of the said complainants was entered into, whereby, in consideration of the sum of eighteen thousand dollars to be paid by the said Maxwell, plaintiffs agreed with the said Maxwell to release and discharge the premises and every part thereof, and also the said Maxwell and wife from the said trust or equitable claim, and in confirmation of such release and discharge to convey to him, the said

Maxwell, all their right, title and interest, respectively, in and to the said premises, the sole object and purpose of the said agreement being to confirm the title of the said Maxwell and wife to the premises, and to release and discharge the same from the said trust or equitable claim set up by the plaintiffs.

Thereupon such other proceedings were had and held that it was made to appear to the said court that the aforesaid agreement between the plaintiffs and Lucien B. Maxwell for the extinguishment of the said claim or trust had been made, and that in consequence thereof the said interlocutory decree for a partition had not been carried into effect and executed; and thereupon at the request and with the consent of the solicitors for the respective parties, plaintiff

and defendant, it was further ordered by the said court
119 that the interlocutory decree aforesaid declaring the said trust and equity in favor of the plaintiffs and directing a partition, and all orders made under and by virtue of the said decree should be, and they were set aside; and it was then, upon like request and agreement, further ordered and decreed that the said Lucien B. Maxwell should pay to the plaintiffs in said suit the said sum of eighteen thousand dollars, to be divided among them as follows, namely: To the said Scheurick and Teresina Bent, his wife, one-third thereof; to the said Hicklin and Estefana Bent, his wife, one-third thereof; and to and among the said children of Alfred Bent, the remaining third part equally; the share of each to be paid into the hands of their said mother and guardian *ad litem*; and upon like request and agreement it was then and there further ordered and decreed by the court that the said Alexander Hicklin and Estefana Bent, his wife, and the said Aloys Scheurick and Teresina Bent, his wife, and the said Guadalupe Bent, guardian *ad litem*, as aforesaid, in the name of said Charles, Julian and Alberto Silas, should, within 10 days from the date, of said decree, severally execute and deliver to the said Lucien B. Maxwell good and sufficient conveyances of all their right, title, interest, etc., in the premises.

The complainants further say that on or about the 3rd day of May, 1866, the said Lucien B. Maxwell paid the said sum of eighteen thousand dollars to the persons and in the proportion as directed by said decree; that the sum of six thousand dollars was paid to the said Guadalupe Bent, administratrix of the said estate of the said

Alfred Bent, and guardian *ad litem* for said infants, and on
120 the 3rd day of May, 1866, the said Scheurick and wife executed and delivered to the said Maxwell a conveyance of one-third interest in the premises, and on the 31st day of May the said Hicklin and wife executed and delivered to the said Maxwell a conveyance of all their right, title, and interest in the premises; and on 3d day of May, eighteen hundred and sixty-six "the said Guadalupe Bent undertook to convey to the said Maxwell all the right, title, and interest in the premises of the said minor children of Alfred Bent, to this decree and deeds the plaintiffs also beg leave to refer from time to time, as it shall become necessary, in the same manner as if the same were herein set out at length, certified copies of which are herewith filed and marked "Exhibits B, F, G, and H,"

and prayed to be taken up as a part of this bill, the complainants further say that by the said agreement made between the said Lucien B. Maxwell and the plaintiffs, in the suit aforesaid, all of the equitable right, title, and interest, if any, of the said Charles Bent and of the said plaintiffs, derived from the said Charles Bent, became and was transferred to and vested in the said Lucien B. Maxwell, and extinguished, and the equitable right, title, and interest, if any, of the said plaintiffs, and each of them, and all trusts, if any, existing in their favor in the premises, was and is wholly extinguished and terminated and the premises and every part thereof, and all persons holding the same or any part or parcel thereof, became and were and are free and discharged of and from the said trust or equitable interest or claim, if any, of the said plaintiffs in the premises.

The complainants further say that the said agreement was fully carried out in good faith by the said surviving plaintiffs, Teresina Bent and Estefana Bent, and their husbands, respectively, by 121 the execution and delivery to the said Maxwell of the conveyance hereinbefore referred to, and so far as the same could lawfully be done under and be virtue of the said order, and the conveyance of Guadalupe Bent in behalf of the said minor children of Alfred Bent, deceased, under and in pursuance of the same, the said trust for equitable interest or claim, if any, of the said Alfred Bent and his said minor children and heirs was wholly terminated and extinguished; but the complainants say that they are advised that in the proceedings in the suit aforesaid, it is doubtful in law whether as against the said minor children and heirs of the said Alfred Bent, it sufficiently appears that they have no equitable or other interest in the said premises, and that such doubt creates a cloud upon the title to the premises which can only be removed by the interposition and decree of this court.

The complainants further say that, in fact, the share of the said Alfred Bent in the said eighteen thousand dollars, namely, six thousand, has passed into the hands of the personal representatives of the said Alfred Bent, namely, the said Guadalupe Thompson, late Guadalupe Bent, and widow of the said Alfred Bent, but now the wife of said George Thompson, who, on the 12th day of April, A. D. eighteen hundred and sixty-six, was duly appointed administratrix of the estate of said Alfred Bent by the Hon. Pedro Sanchez, judge of the court of probate within and for the county of Taos, in the Territory of New Mexico.

The complainants further state that the said agreement has been fully performed by the said Lucien B. Maxwell, and that the complainants are therefore entitled to hold the premises, free and discharged from the said trust, as well as against the heirs 122 of the said Alfred Bent, deceased, as against all other persons.

In tender consideration of the premises, and inasmuch as said complainants are without complete and adequate remedy by the strict rules of the common law, they refer all these matters and things to your honor's court in chancery, where there the same are

properly cognizable and relievable and ask that said defendants and each of them may be required, to the best of their information, knowledge and belief, full, true and perfect answers make to all and singular the allegations in this petition contained, and the premises being found for complainants, they pray that your honor will order, adjudge and decree, that the trust aforesaid be terminated and extinguished as against the defendants; that the defendants have no interest in or title to the premises, equitable or otherwise, and that the plaintiffs respectively shall hold the premises according to the respective interests therein, free and discharged of all trusts in favor of the defendants, and any and all persons claiming under them, and grant to the complainants such other and further relief as may be just and equitable.

May it please your honor to grant unto complainants the writ of subpoena to be directed to Guadalupe Thompson, administratrix of Alfred Bent, deceased, and George Thompson. Juliano Bent, Charles Bent and Alberto Silas Bent, commanding them and each of them, on a certain day, and under a certain penalty therein inserted, to appear at the next regular term of the court of the county of Colfax, then and there to answer the premises and abide the order and decree of the court.

T. B. CATRON,
LUCIEN BIRDSEYE.

Solicitors for Complainants.

123 And afterwards to wit, on the 9th day of April, A. D. 1880 there was filed in said clerk's office the joint and several answers of the defendants to last amended bill which said answer is in the words and figures as follows, to wit:

124 *Joint and Several Answer of Defendants to Last Amended Bill.*

TERRITORY OF NEW MEXICO, }
County of Colfax, }^{ss:}

In the District Court of the First Judicial District, Sitting in and for the County and Territory Aforesaid.

THE MAXWELL LAND GRANT AND RAILWAY COMPANY *et al.* }
vs. }
GUADALUPE THOMPSON *et al.* }

The joint and several answer of Guadalupe Thompson, George W. Thompson (called in plaintiffs' bill as amended George Thompson), husband of the said Guadalupe; Charles Bent, Juliano Bent, and Alberto Silas Bent, the last three being infants and answering hereto by George Boyles, their guardian *ad litem*, to the bill of complaint as amended of Lucien B. Maxwell and Luz B. Maxwell, his wife, and the Maxwell Land Grant and Railway Company, filed herein at the March term, A. D. 1880.

These respondents having heretofore filed their answer to the original bill filed against them in the above-entitled cause, and the

amendments, thereto, and the complainants having since the filing of their said complaint and amendments, to wit: on or about the 24th day of March, A. D. 1880, in pursuance of the mandate of the said Supreme Court of the United States and the order of this court, still further amended their bill of complaint in many important particulars and leave to these respondents to answer the said bill of complaint as last amended having also been obtained from this honorable court.

125 These respondents now and at all times hereafter reserving all manner of benefit and advantage of exception to the many errors and insufficiencies in said bill as amended contained for answer thereto or unto so much or such parts thereof as these respondents are advised are material for them to make answer unto, answering say, they admit that the Republic of Mexico granted unto Charles Beaubien and Guadalupe Miranda a tract of land as stated in complainants' bill, and that the same was duly ratified, by Congress etc., but respondents deny that they, the said Beaubien and Miranda, and those holding under them have ever since maintained and still maintain exclusive, quiet and peaceable possession thereof.

Respondents deny that on the 29th day of May 1865 or at any other time, the said Lucien B. Maxwell and wife had become, and then, or at any other time were the sole owners, in fee-simple and undivided of the whole of the aforesaid granted premises with the exception of a few small parcels heretofore sold by them to other persons.

And respondents know nothing in regard to certain deeds alleged by plaintiffs to have been executed subsequently to the said last-mentioned dates, to the said Maxwell, in confirmation of purchases previously made by him.

Respondents further say that they are strangers to, and know nothing of their own knowledge of the sale and conveyance, by Lucien B. Maxwell and his wife of the premises or grant aforesaid, to the said Maxwell Land Grant and Railway Company, and therefore leave complainants to make such proofs thereof as they shall be able to produce.

126 Respondents admit that at or about the time alleged in complainants' bill, Alfred Bent, since deceased, Estefana Hicklin and Alexander Hicklin, her husband, Teresina Bent (now Scherick) and Aloys Scherick her husband, and also by her next friend Ceran St. Vrain, commenced a suit in the district court of the said Territory of New Mexico for the county of Taos, in the first judicial district, against the said Lucien B. Maxwell and Luz Beaubien Maxwell, his wife, and sundry other persons as to whose interest in the object of this suit respondents are not advised.

As to the loss of pleadings in said suit and complainants' search for the same, these respondents know nothing, nor do they know anything as to what is alleged, in said pleadings, and pray that all the means in the power of this honorable court be used to find said

pleadings and have them before this honorable court, or that complainants be held to make strict proof of the same.

They admit, however, that Charles Bent died intestate, and that the said Alfred Bent, deceased, Estefana Hicklin and Teresina Scheurick were the children and only heirs of the said Charles Bent, and that they were entitled equitably, or otherwise, to the one-fourth part of the aforesaid grant or tract of land; but as to the exact legal or equitable title, or how it was claimed or asserted in the pleadings in said cause respondents are not advised otherwise than by complainants' bill and the decree of partition rendered in said cause.

They admit, however, that the complainants in said cause prayed for a partition of the premises referred to in said cause, upon the footing of the claim as set forth in their petition in said cause.

Respondents admit that the parties respectively appeared
127 in said cause by their attorneys, and that the defendants therein filed their answers, but as to the substance and import of said answers, respondents are not advised otherwise than by what still remains of the record in said cause.

Respondents admit that said cause came by legal continuance to the term held in and for the county of Taos, on the 29th day of May, 1865, when and where the respective parties again appeared as the record shows, and that a decree was rendered which, for greater certainty, is here referred to, and a copy herewith filed, marked "Exhibit A" and prayed to be taken as a part of the answer of these respondents. Respondents admit that in the month of December, A. D. 1865, to wit: on the 9th day of said month, at Taos, in this Territory, the said Alfred Bent departed this life, and that he left three minor children and heirs, who respondents allege are still minors and the only heirs of the said Alfred Bent, deceased, to wit: the respondents, Charles Bent, Julianio Bent and Alberto Silas Bent.

Respondents, further answering, say that as to what agreement the other parties to the said suit for partition may have made with the said Maxwell, they are not fully advised, but wholly deny that the said Alfred Bent in his lifetime, or these respondents, or either or any of them, after the death of the said Alfred Bent, or at any other time, ever entered into or became a party or parties to any agreement by way of a compromise, sale, or otherwise, by which the rights, title or interest of the said Alfred Bent, or these respondents or either or any of them, in and to the said grant and premises, was compromised, released, sold or surrendered as alleged in complainants' bill of complaint.

And respondents further answering say that it is not true
128 as alleged in said complaint, that the claim of the said Alfred Bent, and after his death the claim of the infant respondents herein, in and to their undivided interest in said grant and premises, was ever regarded by them, or either of them, as a doubtful or uncertain claim, but upon the contrary aver that at the time of the alleged agreement and compromise the same was a valid and subsisting claim, and right confirmed and established by the decree of

the court in the said proceedings for partition of said grant and premises.

And respondents say that as to the proceeding alleged by complainants to have taken place at the term of court held in and for the county of Taos, on the 9th day of April, 1886, and at a subsequent term, or terms of said court, they beg leave to refer to the record of said court for a full, perfect and more certain answer herein, but these respondents are advised and therefore allege that all of the said proceedings were illegal, unjust and void, as to these minor respondents, Charles Bent, Julianio Bent and Alberto Silas Bent, and the said respondents further deny that it was ever made to appear to said court, that an agreement between these respondents or any of them, or the said Alfred Bent, had ever been made with the said Maxwell, for the extinguishment of the claim of these respondents or either or any of them, or of the claim of the said Alfred Bent in his lifetime.

And respondents further deny that the said decree, setting aside the former decree establishing the right and interest of said Alfred Bent was ever made at the request and with the consent of the solicitors of these respondents, or any of them, or of the said Alfred Bent, nor did these infant respondents, or any one having
129 authority to represent them, ever authorize any solicitor or solicitors to consent to any decree for the transfer or surrender of their rights as alleged in the complaint herein.

And respondents, further answering, say that the said pretended agreement and proceedings were fraudulent as to these infant respondents, and involved an unjust, ruinous and illegal sacrifice of their just and valid rights; that their interest in the said grant or premises alleged to have been sold, released or surrendered as aforesaid for the sum of six thousand dollars, was at that time worth not less than one hundred thousand dollars, and is now worth a much greater sum.

That said alleged settlement and compromise was not in any way beneficial or advantageous to these infant respondents, or necessary for their support or maintenance.

Respondents admit that the several payments in pursuance of the said pretended decree were afterwards made as by complainants alleged to the said Estefana Hicklin and Teresina Scheurick, and their husbands, and that the said agreement was fully carried out in good faith by the said surviving plaintiffs, Teresina Bent, now Scheurick, and Estefana Bent, now Hicklin, and their husbands, so far as they were bound and effected by the same, by their respectively executing and delivering to the said Maxwell the conveyances referred to in complainants' bill.

Respondents deny that the said sum of six thousand dollars has ever been paid to the respondent, Guadalupe Thompson, as administratrix of the estate of Alfred Bent, deceased, or that the
130 same has ever been paid to her at all; but admit that a partition of the said sum of six thousand dollars, not to exceed the sum of one thousand dollars may have been paid to her as guardian *ad litem*. Said payment of the sum of one thousand dol-

lars or thereabouts, if made at all, being made to her in personal property and not in cash, respondents averring that neither the estate of said Alfred Bent, deceased, nor these infant respondents have ever received any portion whatever of the said sum of one thousand dollars.

But these respondents say that should it be made to appear upon the hearing of the cause that the said Guadalupe Thompson, as administratrix of the estate of Alfred Bent, deceased, or any one legally representing her or these minor respondents, ever received the said sum of six thousand dollars or any part thereof, for the purposes and in pursuance of the alleged agreement as set forth in the complaint, that they are now ready and willing and here offer to repay the same to the said Maxwell or his legal representatives upon such just and equitable terms as the court may prescribe.

Respondents further answering, deny that the respondent, Guadalupe Thompson, on the third day of May, 1866, or at any other time, undertook to convey to the said Maxwell all the right, title and interest of these minor respondents in said premises, and aver that, in making said pretended deed she was wholly ignorant of her duties, obligations and responsibilities as guardian *ad litem* or as commissioner in chancery to carry into effect sales, etc., under and by virtue of the said pretended decree and wholly ignorant of the rights of the said minor children and respondents herein.

131 And respondents further aver that the said alleged deed was procured from the said Guadalupe Thompson through deceitful practices and fraudulent representations upon the part of the said Maxwell and others confederating with him to that end.

And respondents say that as to whether the said trust or equitable interest or claim of the said Alfred Bent and his minor heirs, the infant respondents herein, was wholly terminated and extinguished, or not, respondents are not competent to answer, there being — question of law referable to the court for decision; but they are advised and therefore allege that the said supposed deed of conveyance by the said Guadalupe Thompson was and is illegal and void and wholly inoperative as far as the rights and interests of these minor respondents are concerned.

And respondents further answering say that as to the allegations of complainants touching the supposed order or decree and the effect of the proceedings in this court last above referred to these respondents are not competent to answer as they are advised. They are questions of law, wherefore they are referred to this honorable court for its decision.

They deny, however, that by said proceedings the minor heirs of Alfred Bent, deceased, to wit: the infant respondents herein, were in any manner divested of any title, either legal or equitable, they had at the time in said grant or tract of land.

And the said respondents aver that the pretended order and decree setting aside the prior decree, establishing and confirming the right and interest of the said Alfred Bent in and to the said grant and premises were obtained by fraud and deceitful practices upon the part of the said Maxwell.

132 Respondents further answering deny that the sum of six thousand dollars has ever passed into the hands of the personal representatives of said Alfred Bent, deceased, and deny that the said alleged agreement has ever been fully performed by the said Maxwell, and deny that complainants are entitled to hold said premises free and discharged of any trust, right or title existing in behalf of the said Alfred Bent or his said minor children and heirs.

And the said respondents, Charles Bent, Julianio Bent and Alberto Silas Bent, further answering by their said guardian *ad litem*, say they are infants under the age of twenty-one years, and that they therefore in addition to the matters and things hereinbefore set forth and alleged, submit their rights and interest in the matter in question in this cause to the tender consideration and protection of this court and pray strict proof of all material matters and things in said bill contained not hereinbefore specifically admitted.

And these respondents deny all manner of unlawful combination, etc., without this that there is any other matter or thing in the complainants' said bill contained material or necessary for these respondents to make answer unto and not herein, and hereby well and sufficiently answered, confessed, traversed and avoided or denied, is true to the knowledge or belief of these respondents.

All which matters these respondents are ready and willing to aver, maintain and prove as this honorable court shall direct and humbly pray to be hence dismissed with their reasonable costs, etc.

GUADALUPE THOMPSON AND
GEORGE W. THOMPSON,

133 By their solicitors, H. MERIAM AND
YEAMAN & JOHN.
CHARLES BENT,
JULIANO BENT, AND
ALBERTO SILAS BENT,

By GEORGE BOYLES,

Their Guardian ad Litem.

134

Amendments to Bill.

TERRITORY OF NEW MEXICO, }
 County of Colfax. }

In the District Court for the First Judicial District, Sitting in and for the County of Colfax for the Trial of Causes Arising under the Laws of the Territory.

THE MAXWELL LAND GRANT AND RAILWAY COMPANY and LUZ B. MAXWELL

vs.

GUADALUPE THOMPSON, Late GUADALUPE BENT, Administratrix of the Estate of Alfred Bent, Deceased, and George Thompson, Her Husband, and Charles Bent, Julianio Bent, and Alberto Silas Bent, Infants, by George Boyles, Guardian *ad Litem.* } In Chancery.

To the Honorable L. Bradford Prince, chief justice of the supreme court of the Territory of New Mexico and judge of the first judicial district court thereof, in chancery sitting:

And now the said complainants, by special leave of the court first had and obtained, amend their bill of complaint in this action, as hereinbefore amended and which was filed on the 24th day of March, A. D. 1880, in the manner following, to wit:

First. Strike from said amended bill the name of Lucien B. Maxwell as a complainant therein.

Second. Add to said bill at the end of the stating part thereof, the following allegation:

135 That since the commencement of this suit, said Lucien B. Maxwell, one of the original complainants therein, departed this life; that prior to his death the said Lucien B. Maxwell and Luz B. Maxwell, his wife, by their deed of conveyance, dated the seventh day of September, A. D. 1870, sold, transferred and conveyed, with full covenant of warranty, to the said The Maxwell Land Grant and Railway Company, the home ranch and all the remaining rights, title and interest which they or either of them had in and to the property and every part and portion of the property in question in this suit, so far that they only remain interested in the suit to the extent of their warranty to the said The Maxwell Land Grant and Railway Company and to the extent of the costs in this suit.

T. B. CATRON,
 FRANK SPRINGER,
Solicitors for Complainants.

136 And afterwards, to wit: on the day and year last aforesaid, the same being April 6th, 1882, there was filed in said clerk's office the further answer of Charles Bent, which is in the words and figures as follows, to wit:

Further Answer of Charles Bent.

TERRITORY OF NEW MEXICO, {
 County of Colfax. }

In the District Court in and for the said County of Colfax, of the
 March Term Thereof, A. D. 1882. In Equity.

THE MAXWELL LAND GRANT AND RAILWAY COMPANY *et al.* }
vs. }
 GUADALUPE THOMPSON *et al.*

The further answer of Charles Bent, of lawful age, one of the de-
 fendants, to the amended bill of complaint of The Maxwell Land
 Grant and Railway Company *et als.*, heretofore filed on the 24th
 day of March, A. D. 1880.

The said Charles Bent, against whom in his infancy, the said bill
 was exhibited by leave of the court, and in lieu of the answer to
 the said bill of complaint heretofore filed herein in his behalf, by
 George Boyles, then guardian *ad litem* to this defendant, answering
 to the said amended bill, saith :

He admits the grant of said lands by the Republic of Mexico, to
 said Miranda, and Beaubien ; admits that the grant was duly ac-
 cepted by the said grantees ; denies that said grantees then or at
 any time entered into possession of said premises ; admits that they
 entered into some small parts thereof ; denies that they or
 137 those holding under them have at any time maintained or
 do now maintain exclusive, quiet, or peaceable possession of
 the whole of said tract ; avers on information and belief, that much
 the larger part of said grant has been always and until one year
 last past or thereabouts, vacant and unoccupied, and a large part of
 said grant of lands, is now in the hostile and exclusive possession
 of others, not holding under said Beaubien and Miranda or either
 of them.

Admits that said grant was duly confirmed by act of Congress of
 the United States, as stated in the bill ; denies that by any means
 whatsoever the said Lucien B. Maxwell and wife or either of them
 ever became or at any time were the owners in fee-simple, undivided
 of the whole of said grant with or without the exceptions in the said
 bill mentioned.

Whether any such deeds as in said amended bill mentioned, were
 at any time executed to the said Maxwell in confirmation of any
 such purchases by him as in said complaint mentioned, this defend-
 ant hath no knowledge, information or belief, save by and from the
 said bill of complaint.

This defendant believes it to be true that at or about the time in
 the said bill mentioned or before that the said Lucien B. Maxwell
 and wife, sold and conveyed the said premises to the said Maxwell
 Land Grant and Railway Company as in the said bill averred and

set forth; but this defendant denies that at the time of the said sale and conveyance or either thereof, the said Maxwell and wife or either of them were seized or possessed of the whole of said premises, though

138 this defendant believes it to be true that the said Maxwell and wife were at that time seized of and entitled unto a certain undivided interest, to wit: eleven-twelfths of the said grant, save in certain parts thereof theretofore conveyed by said Maxwell and wife or one of them, and that said Maxwell at the date of said conveyance to the said Maxwell Land Grant and Railway Company, was possessed of the said home ranch in the bill mentioned, and certain mining claims, and other small parcels of land situate within the limits of the said grant. This defendant admits it to be true that about the time in the said bill mentioned the said Alfred Bent, Estefana Hicklin, Alexander Hicklin, her husband, Teresina alias Teresa T. Bent and Aloys Scheurick, her husband, (the said Teresa also suing by her next friend, Ceran St. Vrain,) commenced a suit in the district court of the said Territory of New Mexico, for the county of Taos, against the said Lucien B. Maxwell and Luz, his wife, and sundry other persons, to wit:—Guadalupe Miranda and Charles Beaubien, before named, and one Joseph Pley; but whether the said persons have or have not an interest in the objects of this suit, this defendant is not advised, and therefore neither admits or denies the allegations of said bill in that behalf.

This defendant further answering saith, that whether diligent search was at any time made for the pleadings in the aforesaid suit of Alfred Bent and others, this defendant is not informed save in and by the said bill; but this defendant denies that the said pleadings are lost or destroyed, or cannot be found. On the contrary, this defendant avers on information and belief, that after the exhibition of the said original bill the said pleadings were found, and that certified copies thereof, or what purported so to be, were

139 exhibited in proof, at the former hearing of this cause.

This defendant on information and belief, admits that the petition in the action aforesaid of the said Alfred Bent and others, was in substance as in the said bill set forth.

Admits on information and belief, that such proceedings in the said suit were had, as in the said bill alleged, and that on or about the 29th day of May, A. D. 1865, a decree was made and entered in the said cause in the district court of Taos county aforesaid, substantially as in the said amended bill set forth.

Avers that by the terms of the said decree the undivided one-fourth part of said grant was established and confirmed to them the said Alfred, Estafana and Teresa, their heirs and assigns forever with the full and perfect right, power and authority to possess and enjoy the same.

And this defendant believes that the certain paper-writing filed with the original bill herein, and marked Exhibit "A" is a true copy of the said decree.

This defendant craves that the said Exhibit "A" may be read and taken as a part of this, his answer, with like effect as if the same were herein set forth at large.

That for greater certainty this defendant craves leave to refer at the hearing to the original or some duly authenticated copy of the said decree.

This defendant admits that the said Alfred Bent, afterwards departed this life at Taos in said Territory, but avers on information and belief, that his death occurred on or about the 9th day of December, 1865. Admits that the said Alfred Bent, left him surviving three children, his sole heirs-at-law, to wit, this respondent, then an infant, but who since the filing of the former answer in his behalf herein, to wit: on the 26th day of April, A. D. 1881, hath come of full age, and the said Juliano Bent, and Alberto Silas Bent, then and still infants of tender years.

Admits that this respondent and the said Juliano and Alberto Silas were afterwards made parties complainant in that said suit, and that Guadalupe Bent, widow of the said Alfred Bent now Guadalupe Thompson, wife of George W. Thompson Esq., was appointed guardian *ad litem* for the said infants.

This defendant further answering saith that he hath been informed, and believes it to be true that the said other plaintiffs in that said suit, to wit: the said Estafana Hicklin and the said Teresa Sheurick and their said husbands respectively did after the said entry of the said decree of partition, enter into some agreement, to release and convey unto the said Lucien B. Maxwell the interests of the said Estafana and Teresina in the said grant of lands and did convey to him the said Maxwell their right, title, and interest in and to the said premises, and this defendant hath heard and believes it to be true that the ostensible consideration thereof was the sum of six thousand dollars, to be paid by the said Maxwell to the said Estafana Hicklin, and a like sum to be paid to the said Teresina Sheurick, or to their husbands respectively, but what sum, if any, was in truth paid or agreed to be paid by the said Maxwell to the said Estafana or to the said Teresina or to the husband of either of them, in respect of the said agreement or the said conveyances or releases, or whether the object or purpose of the said agreement was as stated in the said bill of complaint, this defendant hath no knowledge, information or belief, save by and from the said bill of complaint, and neither admits nor denies the allegations of the said bill of complaint in that behalf. Whether at the time of the said agreement the claim of the said plaintiffs in that aforesaid suit was regarded as a doubtful or uncertain claim, on the part of the said plaintiffs, or whether the agreements, so made and entered into between the said Estafana and Teresina and their said husbands with the said Maxwell were made or entered into by way of compromise, this defendant is not informed, save in and by the said bill of complaint.

But this defendant avers on information and belief, that the said agreements, and the conveyances of the said Estefana and Teresina, and their said husbands of their interests in the said grant, were procured and entered into by means and by reason of certain fraudulent representations made or procured to be made by said Maxwell

unto said Estefana and Teresina or their said husbands, touching the extent, character and value of the said grant.

This defendant denies that any such agreement as in the said bill of complaint in that behalf alleged was made or entered into by or in behalf of this defendant the said Juliano, the said Alberto Silas, or either of them.

Denies that they or either of them or the said Guadalupe Bent, or any person having authority for them or either of them in that behalf, ever made or entered into such agreement, though this defendant on information and belief admits that on or about the day in the bill of complaint in that behalf mentioned, the said Estefana and Teresina and their said husbands respectively did make, execute and deliver conveyances of their right, 142 title, and interest in the said premises. That on or about the 3rd day of May 1866, the said Guadalupe Bent, did undertake and assume to convey to the said Maxwell all the right, title, and interest of the said minor children of the said Alfred Bent in and to the said grant and premises but this defendant on information and belief avers that the said Guadalupe Bent, now Guadalupe Thompson is a Mexican woman, and at the time of her said appointment as guardian *ad litem* of the said infants, and at the time of the said pretended conveyance of the interests of said infants in said premises unto said Maxwell, and at the time of the entry of the said decree in the amended bill set forth, setting aside the decree declaring the trust in equity in favor of the said Alfred, Estefana and Teresina, and directing partition of the said lands, the said Guadalupe Bent now Guadalupe Thompson, was wholly ignorant of the English language, unable to write, read or speak the same, unfamiliar with business, or proceedings of courts of law, unacquainted with the rights of said infants in the premises, or her duties in that behalf, as their guardian *ad litem*, and was ignorant of the bounds or extent, character or value of the said grant, and was ignorant of the fact that the said grant had been confirmed by act of the Congress of the United States, and was ignorant of the entry of the decree of the said district court of the county of Taos, establishing the right of the said Alfred, Estefana and Teresina in the said grant, and directing partition thereof, and was ignorant of what part or share in said grant was in fact claimed by the said Alfred Bent in his lifetime; that in and about the management of her business, property and affairs, the said Guadalupe Bent was at all the times aforesaid, wont 143 to consult with and rely upon the advice of the said Aloys Scheurick, that said Scheurick was then residing near to the said Guadalupe Bent, and was always after the death of the said Alfred Bent, accustomed to profess great friendship and regard for her and her children; and a desire to protect and assist her in the management of the estate and property which had been left by the said Alfred Bent, and to protect the interests of her said infant children, that by reason of these professions of the said Aloys and the connection in marriage which had subsisted between the said Aloys and the said Alfred Bent in his lifetime the said Guadalupe

Bent at all the times aforesaid, reposed especial trust and confidence in the said Aloys Scheurick; that the said Lucien B. Maxwell was at all the times aforesaid and long before that as the said Guadalupe and the said Aloys well knew, a man of great wealth and influence, and well knowing the weakness, ignorance and inexperience of the said Guadalupe Bent, and her want of information, as to the extent, value and character of the said grant, and of the confirmation thereof and of the decree establishing the right of the said Alfred, Estefana and Teresina in the said grant, the said Lucien B. Maxwell caused and procured the appointment of the said Guadalupe Bent as guardian *ad litem* to the said infants, and caused and procured the pretended conveyance of the right of said infants in the said premises to be prepared for execution by the said Guadalupe Bent, and caused and procured the said Aloys Scheurick to believe and represent, and the said Scheurick by procurement of said

144 Lucien B. Maxwell or otherwise did represent to the said Guadalupe Bent that the said grant of lands, was for the most part fit only for grazing; that the same contained little or no mineral of value; that the same extended only to the northern line of the Territory of New Mexico; that he the said Maxwell was the owner of the major part of said grant and might and would control the whole thereof, and exclude the said infants from all share or part thereof; that she, the said Guadalupe Bent, was duly authorized to sell and convey the interest of said infants, and that unless she should accept the sum of six thousand dollars therefore; and convey the same to said Maxwell, neither she nor the said infants, would ever realize anything for the interest of said infants in the said grant.

This defendant further answering saith on information and belief, that confiding in the representations of the said Scheurick, not knowing the contrary thereof, and moved and induced by the said representations, and her knowledge of the wealth power and influence of the said Maxwell, the said Guadalupe Bent did assume to execute the pretended conveyance of the interest of said infants in the said premises unto said Maxwell as in the said bill of complaint mentioned.

This defendant, further answering, saith on information and belief, that neither at the time of the execution of her said pretended conveyance, nor at any time before that, was the said pretended conveyance read or interpreted to the said Guadalupe Bent; that said pretended conveyance was executed without the advice of counsel, and at the time thereof the said Guadalupe Bent was in entire ignorance of the character, extent or value of said grant, and of the right and share which said infants had therein.

This defendant, further answering, saith, on information
145 and belief, that neither then nor at any time afterwards did the said Lucien B. Maxwell pay to the said Guadalupe Bent in her capacity as guardian *ad litem* for the said infants or otherwise, the said sum of six thousand dollars or any sum of money whatever for or on account of the right and interest of the infant heirs of Alfred Bent in the said grant, nor was any such payment

of any sum of money whatever made by said Maxwell to this defendant, or to either of said infants, or to *and* any person authorized to receive the same, on behalf of them or either of them.

This defendant further answering saith on information and belief, that the before-mentioned grant contains two million acres of land or thereabouts, and abounds in valuable mines of gold and silver and other valuable minerals and metals; that the said grant also contains a large extent of — acres or thereabouts of well-watered, irrigable lands, suitable for cultivation, and extensive forests of pine and other trees, and that all the residue of the said grant of lands, is valuable for grazing; that the interest and share of the said infants therein, at the time of the execution of the conveyance thereof to said Maxwell, *was* reasonably worth the sum of one hundred thousand dollars or more, and have ever since been appreciating in value; that the said grant in fact extends beyond the northern boundary of the Territory of New Mexico; that two hundred thousand acres or thereabouts of valuable lands within the limits of the former Territory and now State of Colorado, are and

always were parcel of said grant.

146 All which on information and belief this defendant shows, was at the time of procuring the said pretended conveyance, well known to the said Lucien B. Maxwell, and was unknown to the said Guadalupe Bent.

This defendant further answering saith on information and belief, that this defendant's ancestor, the said Alfred Bent left a considerable estate in houses and lands, other than the said grant, and in moneys and personal property, and the said Guadalupe Bent, out of the said estate, was then and always afterwards well able to support and educate the said infants, and neither at the times aforesaid nor at any time, was there any necessity for the sale or other dispositions of the interests of said infants in the said grant.

This defendant further answering, admits on information and belief, that — the September term 1866 of the district court of the said county of Taos, and after the procurement by the said Lucien B. Maxwell of the aforementioned pretended conveyance by the said Guadalupe Bent unto him of the interests of said infants it was ordered by the said district court that the aforementioned decree declaring the rights and interests of the said Alfred, Estafana, and Teresina in the said grant and directing partition thereof and all orders made under and by virtue of the said decree should be and were set aside, and that the said Lucien B. Maxwell should pay to the plaintiffs in that said suit the sum of eighteen thousand dollars, to be divided in manner as in the said amended bill mentioned, and that the said Alexander, Estefana, Aloys and Teresina, and the said Guadalupe Bent, guardian *ad litem* as aforesaid, in the name

within ten days from the date of said decree, severally
147 execute to and deliver to the said Lucien B. Maxwell, good and sufficient conveyances of all their right, title and interest in and to the said premises.

And this defendant, further answering, admits, on information

and belief, that at the time of the entry of said order or decree, it was made to appear to the said district court, that such agreement as in the said bill of complaint herein is falsely alleged, had been made.

This defendant further admits that, on information and belief, that the said last-mentioned order and decree was made at the request and with the consent of the solicitor of the said Maxwell.

Denies that, to the information or belief of this defendant, the said Guadalupe Bent or any solicitor representing her, or either of the said infants, heirs of the said Alfred Bent, ever requested or consented to the last-mentioned order or decree, or that the said Guadalupe Bent nor any person on behalf of this defendant, ever consented or agreed as in the said last-mentioned order and decree is falsely recited, or assented or agreed to the setting aside of the former decree establishing the right of the said Alfred Bent, and the said Estefana Hicklin and Teresina Sheurick in the said grant, and directing partition thereof.

And this defendant further answering saith on information and belief, that the entry of the said order and decree, at the September term 1866, of the district court of said Taos county, was procured in the absence of the said Guadalupe Bent, and without notice to her, of any intention to apply therefor; and by the false representations of the said Lucien B. Maxwell, or the said Aloys Sheurick, or some other person or persons to this defendant unknown made to the said district court, that the said Guadalupe Bent, as
148 guardian *ad litem* to the said infants was consenting to the entry of the said decree as the same was entered at the September term, A. D. 1866, of the said district court, that all and singular the facts hereinbefore set forth, touching the ignorance, weakness and inexperience of the said Guadalupe Bent, and the imposition practiced upon her, and the extent and value of the said grant, and the estate, real and personal, left by the said Alfred Bent, and the ability of the said Guadalupe Bent out of the said estate to maintain and educate the said infants *infants*, were concealed from the said district court at the time of the entry of the said decree, at the September term, 1866, of the said district court; and solely by reason of the said concealment, and the said false representation, the said district court without any reference of the matter to the master, and without any inquiry or judicial examination as to whether the said decree was or would be beneficial to the said infants, the said district court at its said September term, 1866, gave and entered the decree in the said bill of complaint in that behalf set forth.

This defendant, further answering, denies, on information and belief, that the said Lucien B. Maxwell on the 3rd day of May, 1866, or at any time paid the said sum of eighteen thousand dollars to the persons, or in the proportions as directed by said decree.

Avers, on the contrary, that the said decree in the said amended bill last mentioned and set forth, was made and entered more than four months after the said third day of May, 1866.

Denies, on information and belief, that the sum of six
149 thousand dollars or any sum whatever was ever paid to said
Guadalupe Bent in any capacity whatever.

Whether the said paper-writings marked B. F. G. and H. in the
said amended bill mentioned and referred to are true copies of the
said decree and conveyances in that behalf, this defendant cannot
state, inasmuch as the defendant hath never had opportunity to
examine the originals of either thereof, or to compare the same with
the said exhibits.

This defendant denies that by any such agreements as in the said
amended bill alleged, the equitable right, title and interest which
was of the said Charles Bent, in his lifetime, or of the plaintiffs in
that aforementioned suit became or was transferred to or vested in
the said Lucien B. Maxwell or extinguished.

Denies that the interests of the said plaintiffs in that said suit or the
trusts existing in their favor in the said premises, extinguished and
terminated.

Denies that the said premises or those holding the same, became
or were, or now are discharged of said trust or the interests or
claims of the plaintiffs in that said suit, in the said premises;
though this defendant is advised, and for anything this defendant
knows, it may be true that by the conveyances aforesaid of the said
Estafana, Teresina, and their said husbands, all their interests in
the said premises passed to and became invested in the said Lucien
B. Maxwell.

Admits the execution and delivery by the said Estafana and
Teresa, otherwise called Teresina, and their said husbands, unto
said Maxwell of the conveyances in the said bill of complaint
mentioned.

Denies that the pretended conveyance of the said Guada-
150 lupe Bent assumed and pretended to be made in behalf of
the said minor children of said Alfred Bent deceased was
made or pretended to be made in pursuance of the said last-men-
tioned order or decree of the said district court.

Denies that by any of the said conveyances, the right and title of
the infant heirs of the said Alfred Bent in the said premises, was
terminated or extinguished. Denies on information and belief,
that any part of the said eighteen thousand dollars in the complaint
mentioned, has ever passed into the hands of the personal repre-
sentatives of the said Alfred Bent, or into the hands of the said
Guadalupe Thompson, widow of the said Alfred Bent.

Denies on information and belief that the said Guadalupe Bent
now Thompson, was ever appointed administratrix of the estate of
said Alfred Bent.

Avers on information and belief, that if such appointment was
made, the said Guadalupe Bent never accepted the same, or quali-
fied in her said office.

Denies that any such agreement as in the complaint mentioned,
has ever been performed by the said Lucien B. Maxwell.

Denies that the complainant- or any of them, are by any means

whatever, entitled to hold the said premises as against the heirs of the said Alfred Bent, deceased.

This defendant is advised that by the said decree, first in the said bill set forth, the said Alfred Bent in his lifetime, became and was fully seized of, and entitled unto the equal undivided one-twelfth part of the said grant, and was and is entitled, and his heirs-at-law aforesaid, are now entitled to have the same set off and partitioned to them in severalty.

This defendant is advised that by the said amended bill, it
151 appears that the said plaintiffs have not any title to the relief thereby demanded; neither hath this court any jurisdiction to entertain the said bill, or to grant the relief thereby demanded, and this defendant craves the same benefit of this defense, as if he had demurred to the said bill.

This defendant denies all unlawful combination, wherewith he is by the said bill charged, without this, that any other matter or thing in the said amended bill contained, and not herein and hereby well and sufficiently traversed or confessed and avoided, is true to the knowledge or belief of this defendant, and humbly prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

CHARLES BENT.

E. L. SMITH,

CALDWELL YEAMAN,

Of Counsel for Defendant Charles Bent.

STATE OF COLORADO, }
County of Las Animas, } ss:

Charles Bent being first duly sworn saith on oath that he is one of the defendants in the cause mentioned in the foregoing answer by him subscribed, that he hath read the said answer and knows the contents thereof and the same is true to the knowledge of deponent except as to those matters which are stated on information and belief, and as to those matters he believes them to be true.

(Signed)

CHARLES BENT.

Subscribed and sworn to before me this third day of April, A. D. 1882.

[SEAL.]

NORVAL W. WALL,

Notary Public.

152 And afterwards, to wit: at a regular term of the district court of the first judicial district of the Territory of New Mexico begun and held within and for the county of Colfax at the court-house of said county, in the town of Springer, on the first Monday after the fourth Monday of March, 1883, for the trial of causes arising under the laws of said Territory.

Present: The Honorable Samuel B. Axtell, chief justice of the supreme court of the Territory of New Mexico, and judge of the first judicial district court thereof.

William Breeden, attorney general of said Territory.

Mason T. Bowman, sheriff of the county of Colfax.

C. M. Phillips, clerk of said court.

And on the eighth day of said term, the same being Tuesday, April 10th, A. D. 1883, exceptions to amended answer were sustained in the words and figures as follows, to wit:

Judgment on Exceptions to Answers.

TERRITORY OF NEW MEXICO, }
Colfax County. }

In the District Court for the First Judicial District in and for the County of Colfax, April Term, 1883.

THE MAXWELL LAND GRANT AND RAILWAY Co. *et al.* }
vs. } Chancery.
GUADALUPE THOMPSON *et al.*

153 Now comes on the above-entitled cause for hearing on the exceptions filed on the 26th day of April, 1880, to the joint and several answer of the said defendants to the said complainants' bill of complaint, as amended, in said cause, and the court having heard the arguments of the solicitors for the said complainants, as well as for the said defendants, and being fully advised in the premises, doth hereby order, adjudge and decree that the said exceptions taken to the following parts of said answer, be and the same are hereby allowed and sustained, to wit:

Commencing with the word "and" in line twenty-eight (28) of page five (5) of said answer, and ending with the word "premises" in line nine (9) of page six (6) thereof, in words and figures as follows:

"And respondents further answering say, that it is not true as alleged in said complaint, that the claim of the said Alfred Bent, and after his death the claim of the infant respondents herein, in and to their undivided interest in said grant and premises, *nor* ever regarded by them or either of them as a doubtful or uncertain claim, but on the contrary aver that at the time of the alleged agreement and compromise the same was a valid and subsisting claim and right, confirmed and established by the decree of the court in the said proceeding for partition of the said grant and premises."

Also all that part of said answer commencing with the word "and" in line nineteen (19), page six (6), of said answer, and *in* reciting in words and figures as follows, to wit:

"And therefore allege that all of the said proceedings were illegal, unjust and void as to these minor respondents, Charles Bent, Julian Bent and Alberto Silas Bent."

154 Also, all that part of the said answer commencing with the word "and" in line 1 of page 7, and ending with the word "maintenance" in line 29 of the same page, and reciting in words and figures as follows, to wit:

"And respondents further deny that the said decree setting aside

the former decree establishing the right and interest of the said Alfred Bent was ever made at the request and with the consent of the solicitors or their respondents, or any of them, or of the said Alfred Bent, nor did their infant respondents or any one having authority to represent them, ever authorize any solicitor or solicitors, to consent to any decree for the transfer or surrender of their rights as alleged in the complaint herein, and defendants further answering say that the said pretended agreement and proceeding were fraudulent as to these infant respondents, and involved an unjust ruinous and illegal sacrifice of their just and valid rights. That their interest in said grant or premises, alleged to have been sold, released or surrendered as aforesaid, for the sum of six thousand dollars, was at that time worth not less than one hundred thousand dollars, and is now worth a much greater sum. That said alleged settlement and compromise was not in any way beneficial or advantageous to these infants respondents, or necessary to their support, or maintenance."

Also, all that part of the said answer commencing with the word "respondents," in line 10 of page 8, thereof, and reciting in words and figures as follows, to wit:

"Respondents deny that the said sum of six thousand dollars has ever been paid to the said respondent Guadalupe Thompson, as administratrix of the estate of Alfred Bent, deceased, 155 or that the same has ever been paid to her at all; but admit that a portion of the said sum of six thousand dollars, not to exceed the sum of one thousand dollars, may have been paid to her as guardian *ad litem*. Said payment of the sum of one thousand dollars, or thereabouts, if made at all, being made to her in personal property and not in cash, respondents averring that neither the estate of Alfred Bent, deceased, nor these infant respondents have ever received any portion whatever of the said sum of one thousand dollars. But these respondents say that should it be made to appear upon the hearing of this cause, that the said Guadalupe Thompson, as administratrix of the estate of Alfred Bent, deceased, or any one legally representing her, or these minor respondents, ever received the said sum of six thousand dollars, or any part thereof, for the purposes and in pursuance of the alleged agreement as set forth in the complaint, that they are now ready and willing, and here offer to repay the same to the said Maxwell or his legal representatives, upon such just and equitable terms as the court may prescribe."

Also all that part of said answer commencing with the word "and" in line 22 of page 9 of said answer, and reciting in words as follows, to wit:

"And respondents further aver that the said alleged deed was procured from the said Guadalupe Thompson through deceitful practices and fraudulent representations upon the part of the said Maxwell and others confederating with him to that end."

Also all that part of said answer commencing with the word "and" in line 21, page 10, thereof, and reciting in words as follows, to wit:

156 "And the said respondents aver that the said pretended order and decree setting aside the prior decree, establishing and confirming the right and interest of the said Alfred Bent in and to the said grant and premises, were obtained by fraud and deceitful practices upon the part of the said Maxwell."

And also all that part of the said answer commencing with the word "respondents" in line 28 of page 10, thereof, reciting in words as follows, to wit:

"Respondents, further answering, deny that the sum of six thousand dollars has ever passed into the hands of the personal representatives of the said Alfred Bent, deceased."

And also all that part of said answer commencing with the word "deny" in line one (1), page one (1), reciting as follows, to wit:

"Deny that the said complainants are entitled to hold said premises, free and discharged of any trust, right or title existing in behalf of the said Alfred Bent or his said minor children and heirs."

And the court doth further order, adjudge and decree that all the aforesaid recited portions of the said answer be and the same hereby are stricken out from the said answer, and that the said exceptions to all the other portions of the said answer be and the same hereby are overruled and denied.

And the said cause coming on for further hearing on the exceptions filed on the 29th day of March, A. D. 1883, to the further answer of the said Charles Bent, one of the defendants to the said complainants' bill of complaint as amended in said cause, and the

157 court having heard the arguments of the solicitors for the said complainants as well for the said complainants as for the said defendant, Charles Bent, and being fully advised in the premises, doth hereby order, adjudge and decree that the said exceptions taken to the following parts of said answer, be and the same hereby are allowed and sustained, to wit:

Commencing with the word "denies" in line fourteen (14) of page two (2) thereof, and reciting as follows:

"Denies that said grantees then or at any time entered into possession of said premises; admits that they entered into some small parts thereof; denies that they or those holding under them have at any time maintained or do now maintain exclusive quiet or peaceable possession of the whole of said tract; avers on information and belief that much the larger part of said grant has been always and until one year last past or thereabouts vacant and unoccupied, and a large part of said grant of lands, is now in the hostile and exclusive possession of others, not holding under said Beaubien and Miranda or either of them."

Also commencing with the word "denies" in line three (3) of page three (3) thereof, and reciting as follows, to wit:

"Denies that by any means whatsoever, the said Lucien B. Maxwell and wife or either of them ever became or at any time were the owners in fee-simple undivided of the whole of said grant with or without the exceptions in the said bill mentioned."

Also commencing with the words "but this" in line twenty-five (25) of page three (3) thereof, and reciting as follows, to wit:

158 "But this defendant denies, that at the time of the said sale and conveyance or either thereof, the said Maxwell and wife, or either of them were seized or possessed of the whole of said premises, though this defendant believes it to be true that the said Maxwell and wife were at that time seized of, and entitled unto a certain undivided interest, to wit, eleven-twelfths of the said grant save in certain parts thereof therefore conveyed by said Maxwell and wife or one of them, and that said Maxwell, at the date of said conveyance to the said Maxwell Land Grant and Railway Company, was possessed of the said home ranch in the bill mentioned, and certain mining claims, and other small parcels of land situate within the limits of the said grant."

Also commencing with the word- "but this" in line nine (9) of page five (5) thereof, and reciting as follows, to wit:

"But this defendant denies that the said pleadings are lost or destroyed, or cannot be found; on the contrary, this defendant avers on information and belief, that after the exhibition of the said original bill the said pleadings were found, and that certified copies thereof, or what purported so to be, were exhibited in proof at the former hearing of this cause."

Also commencing with the word "avers" in line three (3) of page six (6) thereof, reciting as follows, to wit:

Avers that by the terms of the said decree the undivided one-fourth part of said grant was established and confirmed to them the said Alfred, Estefana, and Teresa, their heirs and assigns forever, with the full and perfect right power and authority to possess and enjoy the same."

Also commencing with the word "but," in line two (2) of page nine (9) thereof, and reciting as follows, to wit:

159 "But this defendant avers on information and belief that the said agreements, and the conveyance of the said Estefana and Teresina, and their said husbands of their interests in the said grant, were procured and entered into by means and by reason of certain fraudulent representations made or procured to be made by said Maxwell unto said Estefana and Teresina or their said husbands, touching the extent, character and value of the said grant."

Also commencing with the word "that," in line two (2) of page ten (10) thereof, and reciting as follows, to wit:

"That on or about the 3rd day of May, 1866, the said Guadalupe Bent, did undertake and assume to convey to the said Maxwell all the right, title and interest of the said minor children of the said Alfred Bent in and to the said grant and premises but this defendant on information and belief avers that the said Guadalupe Bent, now Guadalupe Thompson is a Mexican woman, and at the time of her said appointment as guardian *ad litem* of the said infants, and at the time of the said pretended conveyance of the interests of said infants in said premises unto said Maxwell, and at the time of the entry of the said decree in the said amended bill set forth, setting aside the decree declaring the trust in equity in favor of the said

Alfred, Estefana, and Teresina, and directing partition of the said lands, the said Guadalupe Bent, now Guadalupe Thompson was wholly ignorant of the English language unable to write, read or speak the same, unfamiliar with business, or proceedings of courts of law, unacquainted with the rights of said infants in
160 the premises, or her duties in that behalf as their guardian *ad litem*, and was ignorant of the bounds, or extent, character or value of the said grant, and was ignorant of the fact that the said grant had been confirmed by act of the Congress of the United States, and was ignorant of the entry of the decree of the said district court of the county of Taos, establishing the right of the said Alfred, Estefana and Teresina, in the said grant, and directing partition thereof, and was ignorant of what part or share in said grant was in fact claimed by the said Alfred Bent in his lifetime; that in and about the management of her business, property and affairs, the said Guadalupe Bent was at all the times aforesaid wont to consent with and rely upon the advice of said Aloys Scheurick; that said Scheurick was then residing near to the said Guadalupe Bent, and was always after the death of the said Alfred Bent accustomed to profess great friendship and regard for her and her children and a desire to protect and assist her in the management of the estate and property which had been left by the said Alfred Bent, and to protect the interests of her said infant children; that by reason of these professions of the said Aloys, and the connection in marriage which had subsisted between the said Aloys and the said Alfred Bent in his lifetime, the said Guadalupe Bent at all the times aforesaid, reposed especial trust and confidence in the said Aloys Scheurick; that the said Lucien B. Maxwell was at all the times aforesaid, and long before that as the said Guadalupe and the said Aloys will knew, a man of great wealth and influence, and well knowing the weakness, ignorance and inexperience of the said Guadalupe Bent and her want of information as to the extent, value and character of the said grant, and of the confirmation thereof, and of the decree establishing the
161 right of the said Alfred, Estefana and Teresina in the said grant, the said Lucien B. Maxwell caused and procured the appointment of the said Guadalupe Bent as guardian *ad litem* to the said infants, and caused and procured the pretended conveyance of the right of said infants in the premises to be prepared for execution by the said Guadalupe Bent, and caused and procured the said Aloys Scheurick to believe and represent, and the said Scheurick by procurement of said Lucien B. Maxwell or otherwise did represent to the said Guadalupe Bent that the said grant of lands was for the most part fit only for grazing; that the same contained little or no mineral of value, that the same extended only to the northern line of the Territory of New Mexico; that he the said Maxwell was the owner of the major part of said grant and might, and would control the whole thereof and exclude the said infants from all share or part thereof; that she the said Guadalupe Bent was duly authorized to sell and convey the interest of said infants and that unless she should accept the sum of six thousand dollars therefor, and convey

the same to the said Maxwell neither she nor the said infants would ever realize anything for the interest of said infants in said grant."

Also commencing with the word "this" in line twenty (20) of page thirteen (13) thereof, and reciting as follows, to wit:

"This defendant further answering saith on information and belief, that confiding in the representations of the said Scheurick, not knowing the contrary thereof, and moved and induced by the said representations, and her knowledge of the wealth, power and influence of the said Maxwell, the said Guadalupe Bent did assume to execute the pretended conveyance of the interests of said
162 infants in the said premises unto said Maxwell, as in the said bill of complaint mentioned. This defendant further answering saith on information and belief, that neither at the time of the execution of her said pretended conveyance, nor at any time before that was the said pretended conveyance read or interpreted to the said Guadalupe Bent, that said pretended conveyance was executed without the advice of counsel and at the time thereof, the said Guadalupe Bent was in entire ignorance of the character, extent or value of said grant and of the right and share which said infants had therein."

Also commencing with the word "this" in line seventeen (17) of page fourteen (14) thereof, and reciting as follows, to wit:

"This defendant further answering saith on information and belief, that neither then nor at any time afterwards did the said Lucien B. Maxwell pay to the said Guadalupe Bent in her capacity as guardian *ad litem* for said infants or otherwise, the said sum of six thousand dollars or any sum of money whatever for or on account of the right and interest of the said infant heirs of Alfred Bent in the said grant, nor was any such payment of any sum of money whatever made by said Maxwell to this defendant, or to either of said infants, or to any person authorized to receive the same on behalf of them or either of them."

Also commencing with the word "this" in line three (3) of page fifteen (15) thereof, and reciting as follows, to wit:

"This defendant further answering saith on information and belief, that the before-mentioned grant contains two million acres of land or thereabouts and abounds in valuable mines of gold
163 and silver and other valuable minerals and metals; that the said grant also contains a large extent of — acres or thereabouts, of well-watered, irrigable lands, suitable for cultivation, and extensive forests of pine and other trees, and that all the residue of the said grant of lands is valuable for grazing; that the interest and share of the said infants therein, at the time of the execution of the conveyance thereof to said Maxwell was reasonably worth the sum of one hundred thousand dollars or more, and hath ever since been appreciating in value; that the said grant in fact extends beyond the western boundary of the Territory of New Mexico; that two hundred thousand acres or thereabouts of valuable lands within the limits of the former Territory, and now State of Colorado, are and always were parcel of said grant. All of which on information and belief this defendant shows, was at the time of

procuring the said pretended conveyance well known to the said Lucien B. Maxwell, and was unknown to the said Guadalupe Bent."

Also commencing with the word "this" in line five (5) of page sixteen (16) thereof, and reciting as follows, to wit:

"This defendant further answering saith on information and belief that this defendant's ancestor the said Alfred Bent left a considerable estate in houses and lands, other than the said grant, and in moneys and personal property, and the said Guadalupe Bent, out of the said estate, was then and always afterwards well able to support and educate the said infants, and neither at the times aforesaid, nor at any time, was there any necessity for the sale or other disposition of the interests of said infants in the said grant."

164 Also commencing with the word "this" in line eighteen (18) of page sixteen (16) thereof, and reciting as follows, to wit:

"This defendant further answering, admits on information and belief that at the September term, 1866, of the district court of the said county of Taos, and after the procurement by the said Lucien B. Maxwell of the aforementioned pretended conveyance by the said Guadalupe Bent unto him of the interests of said infants, it was ordered by the said district court that the aforementioned decree declaring the rights and interests of the said Alfred, Estefana and Teresina in the said grant and directing partition thereof, and all orders made under and by virtue of the said decree, should be and were set aside, and that the said Lucien B. Maxwell should pay to the plaintiffs in that said suit the sum of eighteen thousand dollars, to be divided in manner as in the said amended bill mentioned, and that the said Alexander, Estefana, Aloys and Teresina, and the said Guadalupe Bent, guardian *ad litem* as aforesaid, in the name of this defendant, and the said Juliano and Alberto Silas should within ten days from the date of said decree severally execute to and deliver to the said Lucien B. Maxwell good and sufficient conveyances of all their right, title and interest in and to the said premises."

Also commencing with the word "denies" in line thirty (30) of page seventeen (17) thereof, and reciting as follows, to wit:

"Denies that to the information or belief of this defendant, the said Guadalupe Bent, or any solicitor representing her, or either of the said infants, heirs of the said Alfred Bent, ever requested
165 or consented to the said last-mentioned order or decree, or that the said Guadalupe Bent nor any person, on behalf of this defendant, ever consented or agreed, as in the said last-mentioned order and decree is falsely recited, or assented or agreed to the setting aside of the former decree establishing the right of the said Alfred Bent and the said Estefana Hicklin and Teresina Scheurick in the said grant, and directing partition thereof. And this defendant, further answering, saith, on information and belief, that the entry of the said order and decree at the September term, 1866, of the district court of the said Taos county, was procured in the absence of the said Guadalupe Bent, and without notice to her of any intention to apply therefor, and by the false representations of the

said Lucien B. Maxwell, or the said Aloys Scheurick, or some other person or persons to this defendant unknown made to the said district court, that the said Guadalupe Bent, as guardian *ad litem* to the said infants, was consenting to the entry of the said decree as the same was entered at the September term, A. D. 1866, of the said district court, that all and singular the facts hereinbefore set forth, touching the ignorance, weakness and inexperience of the said Guadalupe Bent, and the imposition practiced upon her and the extent and value of the said grant, and the estate, real and personal, left by the said Alfred Bent, and the ability of the said Guadalupe Bent out of the said estate to maintain and educate the said infants, were concealed from the said district court at the time of entry of the said decree, at the September term, 1866, of the said district court, and solely by reason of the said concealment, and the said false representations, the said district court without any

166 reference of the matter to the master, and without any inquiry or judicial examination as to whether the said decree was or would be beneficial to the said infants, the said district court at its said September term, 1866, gave and entered the decree in the said bill of complaint in that behalf set forth."

Also commencing with the word "this" in line thirty (30) of page nineteen (19) thereof, and reciting as follows, to wit:

"This defendant further answering denies, on information and belief, that the said Lucien B. Maxwell on the 3rd day of May, 1866, or at any time paid the said sum of eighteen thousand dollars to the persons, or in the proportions as directed by said decree."

Also commencing with the word "avers" in line six (6) of page twenty (20) thereof, and reciting as follows, to wit:

"Avers, on the contrary that the said decree in the said amended bill last mentioned and set forth, was made and entered more than four months after the said third day of May, 1866."

Also commencing with the word "denies" in line eleven (11) of page twenty (20) thereof and reciting as follows, to wit:

"Denies on information and belief that the sum of six thousand dollars or any sum whatever was ever paid to said Guadalupe Bent in any capacity whatever."

Also commencing with the word "whether" in line sixteen (16) of page twenty (20) thereof, and reciting as follows, to wit:

"Whether the said paper-writings marked B. F. G. and H. in the said amended bill mentioned and referred to are true copies
167 of the said decree and conveyances in that behalf, this defendant cannot state, inasmuch as the defendant hath never had opportunity to examine the originals of either thereof, or to compare the same with the said exhibits."

Also commencing with the word "this" in line eight (8) of page twenty-three (23) thereof, and reciting as follows to wit:

"This defendant is advised that the said decree first in the said bill set forth, the said Alfred Bent in his lifetime became and was fully seized of and entitled unto the equal undivided one-twelfth part of the said grant, and was and is entitled and his heirs-at-law

aforesaid are now entitled to have the same set off and partitioned to *theirs* in severalty."

Also commencing with the word "this" in line nineteen (19) of page twenty-three (23) thereof, and reciting as follows, to wit:

"This defendant is advised that by the said amended bill it appears that the said plaintiffs have not any title to the relief thereby demanded, neither hath this court any jurisdiction to entertain the said bill or to grant the relief thereby demanded, and this defendant craves the same benefit of this defense as if he had demurred to the said bill."

And the court doth further order, adjudge, and decree that all the aforesaid recited portions of the said further answer of the said defendant Charles Bent, be and the same hereby are stricken out from the said answer and the same hereby are denied and overruled.

S. B. AXTELL,

Chief Justice.

April 6th, 1883.

168 And on the day and year last aforesaid there was filed in said clerk's office a replication which is in the words and figures as follows, to wit:

Replication.

TERRITORY OF NEW MEXICO, {
County of Colfax. }

In the District Court for the First Judicial District in and for the County of Colfax, April Term, 1883.

THE MAXWELL LAND GRANT AND RAILWAY Co. *et al.* }
vs. }
GUADALUPE THOMPSON *et al.*

The replication of the said complainants to the joint and several answer of the said defendants to the bill of complaint as amended and to the separate answer of Charles Bent thereto.

These repliants saving and reserving to themselves all and all manner of advantage of exception to the manifold insufficiencies of the said answers for replication thereunto, say that they will aver and prove their said bill to be true certain and sufficient in the law to be answered unto; and that the said answers of the said defendants are uncertain, untrue, and insufficient to be replied unto by these repliants; without this, that any other matter or thing whatsoever in said answers contained, material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true. All which matters and things these repliants are and will be, ready to aver and prove, as this honorable court shall direct; and

169 humbly pray as in and by their said amended bill they have already prayed.

T. B. CATRON,
FRANK SPRINGER,
Solicitors for Complainants.

170 And afterwards, to wit: on the 23rd day of October, 1884, there was filed in said clerk's office a decree, which said decree is in the words and figures as follows, to wit:

Decree.

THE MAXWELL LAND GRANT AND RAILWAY COMPANY
and LUZ B. MAXWELL

vs.

GUADALUPE THOMPSON, Administratrix of the Estate of
Alfred Bent; George W. Thompson, Her Husband;
Charles Bent, Julianio Bent, and Alberto Silas Bent.

} Chancery.

In the District Court, County of Colfax, Territory of New Mexico,
at Chambers, in Vacation, at Santa Fé, New Mexico.

This cause coming on to be heard on the 22nd and 23rd days of October, 1884, on the mandate from the supreme court of the Territory of New Mexico, the judgment of this court upon said mandate, the pleadings and exhibits and proofs on file herein, and the stipulation on file in this cause, signed by the solicitors of the respective parties, dated the 16th of September, 171 1884, whereby it is agreed that this cause may be heard upon its merits before the judge of this court at his chambers in vacation in the city of Santa Fé, New Mexico, on the 22nd day of October, 1884, and that a final decree may be rendered and enrolled herein with the same force and effect as though rendered and enrolled at a regular term of this court, upon reading the same, and after hearing Frank Springer, Esquire, of counsel for said complainant, and Caldwell Yeaman, Esquire, of counsel for said defendants, and due deliberation being thereupon had, it appears to the court, and the court doth find and declare, that on or about the twelfth day of September, 1859, Alfred Bent and others, commenced a suit in the district court of the Territory of New Mexico, within and for the county of Taos, against Lucien B. Maxwell and others, setting up a claim to an undivided one-fourth part of that certain tract of land now commonly known as the Maxwell land grant, and particularly described and set forth in the amended bill of complaint herein, and praying a partition of said property; that afterwards, in December, 1865, and while said suit was still pending, the said Alfred Bent departed this life, leaving him surviving, a widow, Guadalupe Bent, now Guadalupe Thompson, one of the defendants herein; and three infant children, Charles Bent, Julianio Bent and Alberto Silas Bent, who are also defendants herein; and that afterwards, at the regular April term, 1866, of said court, the said infant children were, by an order of said court, made parties complainant to said suit, and the said Guadalupe Bent, their mother, appointed guardian *ad litem* and commissioner in chancery for said infants, with full power to execute deeds or carry into execution all 172 sales or transfers made of their interest in and to said property to Lucien B. Maxwell.

And the court doth further find and declare that, while said suit so commenced as aforesaid in 1859, was still pending and undetermined in said district court for said county of Taos, and after the death of said Alfred Bent, an agreement by way of compromise was made by the adult parties thereto, including said guardian *ad litem*, for the settlement of the same, and settling and determining all the equities in the same, and that the terms of said agreement and compromise were considered advantageous to said infants, and were accepted by the court for and on their behalf, as is evidenced by the decree attempting to carry into full effect the terms of said compromise.

And the court doth further find and declare that the sum of money which by the terms of said compromise was to be paid by said Lucien B. Maxwell to or for said infants, has by said Maxwell been fully paid in accordance with the terms of said compromise; and that thereby, and by reason of said agreement and compromise, all the right, title, interest and claim either at law or in equity of the said Guadalupe Bent, now Guadalupe Thompson, and of the said infants, Charles Bent, Julianio Bent and Alberto Silas Bent in and to the premises in question, became and were wholly terminated and extinguished.

It is therefore ordered, adjudged and decreed, by the court that the said premises, land and real estate be, and that they now are, held and possessed by the said Maxwell Land Grant and Railway Company, free and discharged of and from any and all trusts, right, title, interest or claim in or to the same in favor of or pertaining to the said Guadalupe Thompson, either in her own right or as administratrix of the estate of said Alfred Bent, deceased, the said George W. Thompson, her husband; the said Charles Bent, Julianio Bent and Alberto Silas Bent, or to any or either of them; and it is further ordered, adjudged and decreed that said complainants pay all costs accrued herein taxed at — dollars.

S. B. AXTELL,
Chief Justice, etc.

October 23, 1884.

174 And afterwards, to wit: on the 23rd day of May 1885 there was filed in the office of the clerk of said court a mandate from the supreme court of the Territory of New Mexico, which said mandate is in the words and figures as follows, to wit: and said mandate appears not to be on file in said clerk's office at the present time.

And on the day and year last aforesaid there was filed in said clerk's office an order, which said order is in the words and figures as follows, to wit:

Order.

TERRITORY OF NEW MEXICO, }
County of Colfax. }

THE MAXWELL LAND GRANT AND RAILWAY CO. *et al.* }
vs. }
 GUADALUPE THOMPSON *et al.*

On reading and filing the mandate of the supreme court of the Territory of New Mexico whereby the decree heretofore given herein, is reversed, and this cause remanded with directions that defendants be permitted to restore to their answers the portions thereof

175 which were stricken out on exception, and thereafter to proceed to final hearing and judgment, and upon hearing Caldwell Yeaman, Esq., and Messrs. Wells, Macon and McNeal

for the defendant and T. B. Catron, Esq., and Frank Springer Esq., of counsel for said plaintiffs, the court being sufficiently advised in the premises, it is ordered and adjudged that the decree of the said supreme court of the Territory of New Mexico be and the same is hereby made the decree of this court, and that the order and decree of this court heretofore made and entered herein as well as the order sustaining the exceptions to the answers of the said defendants be vacated, annulled and from hence for naught held; that the exceptions of the said plaintiffs to the joint and several answers of the said defendants filed herein on the 9th day of April, A. D. 1880, and the exceptions taken by the said plaintiffs to the further answer of the said Charles Bent filed herein on the 6th day of April, A. D. 1882, be and the same are hereby denied.

Ordered that the parts of the said answers struck out upon the said exceptions be and the same are hereby restored to the said answers and each thereof and that the said plaintiffs reply to the said answers in — days hereof; ordered that this cause stand continued until the next term of court.

S. B. AXTELL,
Chief Justice, etc.

176 And afterwards, to wit: on the 26th day of September, 1887, there was filed in said clerk's office a stipulation, which said stipulation is in the words and figures as follows, to wit:

TERRITORY OF NEW MEXICO, }
Colfax County, } *ss:*

In the District Court of said County. In Equity.

THE MAXWELL LAND GRANT AND RAILWAY CO. *et al.* }
vs. }
 GUADALUPE THOMPSON *et al.*

It is hereby stipulated that all depositions taken or which may be taken, and testimony taken or which may be taken or produced

on behalf of either party in the case of Charles Bent and others against The Maxwell Land Grant and Railway Company and others now pending in this court on the equity side thereof, may be read in evidence so far as relevant and competent on behalf of either party on the final hearing of this cause with like effect as if taken and produced in this cause.

Dated, this April 25th, A. D. 1885.

T. B. CATRON,
FRANK SPRINGER,

Complainant's Solicitors.

C. YEAMAM.
WELLS, MACON & McNEAL.

177 And afterwards, to wit, on the 8th day of May, 1893, a decree in said cause was filed in said clerk's office, which said decree is in the words and figures as follows, to wit:

Decree.

In the District Court for the Fourth Judicial District in and for the County of Colfax.

THE MAXWELL LAND GRANT AND RAILWAY COM-
PANY and LUZ B. MAXWELL

vs.

GUADALUPE THOMPSON, Administratrix of the Estate of
Alfred Bent, deceased; George W. Thompson, Julian
Bent, Charles Bent, and Alberto Silas Bent.

Chancery.
No. 356.

This cause coming on to be heard on the mandate from the supreme court of the Territory of New Mexico, the judgment of this court upon said mandate, the pleadings, exhibits and proofs on file herein, and the stipulation on file signed by the solicitors of the respective parties, dated the 30th day of April, A. D. 1892,

178 the court having at a former day heard full argument of the cause by Mr. Frank Springer of counsel for complainants, and Mr. Caldwell Yeaman and R. T. McNeil of counsel for defendants, and due deliberation having been thereupon had, the court finds the equities of said cause to be with complainants, and that they are entitled to the relief prayed for in the bill of complaint.

It is therefore considered, adjudged and decreed by the court that the said defendants, Guadalupe Thompson, George W. Thompson, Charles Bent, Julian Bent and Alberto Silas Bent have no interest in or title to the lands, premises and real estate in the bill of complaint described either equitable or otherwise, and that the same are now held and possessed by the said Maxwell Land Grant and Railway Company and its assigns, free and discharged of and from any and all trusts, right, title, interest or claim in and to the same in favor of said defendants, or any or either of them; and it is

further ordered, adjudged and decreed that the said complainants pay the costs of this suit to be taxed.

Dated, Las Vegas, New Mexico, this 8th day of May, A. D. 1893.

JAMES O'BRIEN,

Chief Justice, etc.

179 And afterwards, to wit, on July 29, 1895, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico an assignment of errors in said cause; which said assignment was and is in the words and figures following, to wit:

In the Supreme Court of the Territory of New Mexico, July Term, 1895.

CHARLES BENT, JULIANO BENT, ALBERTO
SILAS BENT, Appellants,

vs.

THE MAXWELL LAND GRANT AND RAIL-
way Company, Guadalupe Miranda;
Jesus G. Abreu, as Executor of the
Last Will of Charles Beaubien; Luz B.
Maxwell, Petra Abreu, Jesus G. Abreu,
Her Husband; Juana Clothier and
Joseph Clothier, Her Husband; Pablo
Beaubien, Virginia Keyes and —
Keyes, Her Husband; Peter Maxwell,
Amelia Abreu and — Abreu, Her
Husband; Sophia Jaramillo, Pablito
Maxwell, Odila Maxwell, Benigna
Mares and Vicente Mares, Her Hus-
band; The Unknown Heirs of Joseph
Pley, Deceased; Estefana Hicklin,
Teresina Scheurich, Aloys Scheurich,
Her Husband; Guadalupe Thompson,
The Maxwell Land Grant & Railway
Company, The Unknown Heirs of Leo-
nora Trujillo and of Frederick Miller
and Theodora Miller, His Wife; Cyrus
W. McCormick, and James M. Miller,
Appellees.

No. 581. Appeal from
Fourth District Court,
Colfax County.

Assignment of Errors.

And the said appellants, by Caldwell Yeaman and Wells, Mc-
Neal & Taylor, their attorneys, come now and say that in the record
and proceedings of said district court and the decree given in the
said district court manifest error hath intervened in this, to wit:

That by the record and proceeding of the said district court it
doth appear that the said district court by its final decree
180 herein dismissed the bill of complaint of the said appellants
out of the said district court and decreed that the said ap-

pellants should pay the costs of the said suit, whereas by the law of the land decree ought to have been given in the said district court in favor of the said appellants and according to the prayer of the bill of complaint herein.

Wherefore, for the errors aforesaid and the manifold other error in the said record and decree appearing, appellants pray that the decree of the said district court may be reversed, annulled, and altogether held for naught, and they also pray judgment for their costs.

CALDWELL YEAMAN,
WELLS, McNEAL & TAYLOR,
Attorneys for Appellants.

And afterwards, at a regular term of the supreme court of the Territory of New Mexico, begun and held at Santa Fé, New Mexico, the seat of government of said Territory, on the last Monday in July, 1895, on the thirtieth day of said term, the same being Wednesday, October 9, 1895, the following, among other, proceedings were had, to wit:

THE MAXWELL LAND GRANT AND RAIL- WAY COMPANY <i>et al.</i> , Appellees, <i>vs.</i> GUADALUPE THOMPSON <i>et al.</i>	}	581. Appeal from Colfax County.
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This cause having been argued by counsel and submitted to and taken under advisement by the court upon a former day of the present term, the court, being now fully advised in the premises, announces its decision by Associate Justice Collier affirming the decree of the court below, Associate Justices Laughlin, Hamilton, and Bantz concurring. It is therefore ordered, adjudged, and decreed by the court that the decree of the district court in and for the county of Colfax, whence this cause came into this court, be, and the same hereby is, affirmed, and that this cause be, and the same hereby is, remanded to said district court, with directions to carry said decree into effect; and it is further ordered, adjudged, and decreed by the court that said appellants pay all costs in this behalf expended, to be taxed, and that execution issue therefor.

And afterwards, at the term of said supreme court last aforesaid, one the thirty-fifth day thereof, the same being Tuesday, October 15, 1895, the following, among other, proceedings were had, to wit:

181 THE MAXWELL LAND GRANT and Railway Company <i>et al.</i> , Appellees, <i>vs.</i> GUADALUPE THOMPSON <i>et al.</i> , Appel- lants.	}	581. Appeal from District Court of Colfax County.
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Now come the said appellees, by their solicitor, Frank Springer, Esq., and the said appellants come by their solicitor, R. T. McNeal,

Esq., and said appellants pray an appeal from the judgment and decree of this court in this cause to the Supreme Court of the United States, and the court, being sufficiently advised in the premises, grants said motion. It is therefore considered and adjudged by the court that said appellants be, and they hereby are, allowed an appeal from the judgment and decree of this court in this cause to the Supreme Court of the United States; and it is further ordered by the court that said appellants enter into a good and sufficient bond to appellees in the sum of five hundred dollars, with sureties to be approved by the clerk of this court, conditioned for the payment of all costs in connection with this appeal; and thereupon the court makes and certifies a statement of the facts herein for the purpose of such appeal and orders that the same be made a part of the record in this cause.

And afterwards, to wit, on the 15th day of October, 1895, there was filed in the office of the clerk of said supreme court the findings of fact made and certified by the court in said cause; which said findings of fact are in the words and figures following, to wit:

182 In the Supreme Court of the Territory of New Mexico, July Term, 1895.

CHARLES BENT <i>et al.</i> , Appellants,	} No. 579.
<i>vs.</i>	
GUADALUPE MIRANDA <i>et al.</i> , Appellees.	

THE MAXWELL LAND GRANT AND RAILWAY COMPANY	} No. 581.
<i>et al.</i> , Appellees,	
<i>vs.</i>	
GUADALUPE THOMPSON <i>et al.</i> , Appellants.	

Now, on this day, come the appellants, by their counsel, and move the court to make and certify a statement and finding of the facts for the purpose of an appeal to the Supreme Court of the United States, and thereupon the court grants said motion.

And the court now, being sufficiently advised and pursuant to the statute in such cases made and provided, does make and certify the following as a statement and finding of the facts proven and established by the evidence in each of the above-entitled causes, to wit:

In the year 1841 a grant of land was made by the Mexican government to Charles Beaubien and Guadalupe Miranda of a tract of land situate in the present Territory of New Mexico and which afterwards came to be and now is commonly known as the Maxwell grant. They were placed in possession of it in 1843. The grant was confirmed by act of Congress approved June 21st, 1880. In September, 1859, Alfred Bent and his two sisters, Estefana, wife of Alexander Hicklin, and Teresina, who soon after became the

183 wife of Aloys Sheurich, set up a claim to one-third undivided interest in the said grant in the right of their father, Charles

Bent, who had died in 1847. They began an action in chancery in the district court of the Territory of New Mexico in and for the county of Taos against Beaubien, Miranda, L. B. Maxwell, and Joseph Pley, by filing their original bill September 12th, 1859, in words and figures following:

DOCUMENTARY EVIDENCE.

EXHIBITS "A," "B," "C," "D," "E," "F," "G," AND "H," ANNEXED TO BILL.

Bill of Complaint in the Suit of Alfred Bent and Others Against Charles Beaubien and Others.

UNITED STATES OF AMERICA, }
Territory of New Mexico, County of Taos, }⁸⁸:

In the United States District Court for the 2nd Judicial District of the Territory of New Mexico, September and October Term, A. D. 1859.

To the Honorable William G. Blackwood, presiding judge of said district court, in chancery sitting:

Humbly complaining, show unto your honor, your orator and oratrixes, Alfred Bent, Estefana Hicklin, and her husband Alexander Hicklins, and Teresa Bent, a minor, by her next friend, Ceran St. Vrain, of the county of Taos, Territory of New Mexico, that Charles Bent, of the county of Taos, deceased, the late father of your orator and oratrixes, Alfred Bent, Estefana Hicklin and Teresa Bent, was in *her* lifetime the owner in right and equity, of the undivided one-third part of a certain "merced" or grant of lands made by the Mexican government, in or about the year 1843, in due form of law, to Guadalupe Miranda and Charles Beaubien, which said grant or "merced" of lands is situated, lying and being in the said county of Taos, on the rivers known as the Rayado, Ponie Vermejo, Cimarron Cito and Colorado, and known as the "Rayado grant;" and the said deceased being entitled to be seized as owner of the one undivided third part of the lands aforesaid, did depart this life the year 1844, leaving your orator and oratrixes coheirs and heiresses him surviving; and upon his death the said one undivided third part of said lands should have descended upon and should have come to your orator and oratrixes, the said Alfred Bent, Estefana Hicklin and Teresina Bent; and your orator and oratrixes further show unto your honor that though the name of our late deceased father, Charles Bent, does not appear as one of the grantees of the said "merced," yet it is a fact of common notoriety that the said grant was obtained from the late Mexican government mainly by his exertion, influence and instrumentality, and that the said Miranda and Beaubien, the grantees named in the documents of the grant or "merced" from the said Mexican government aforesaid, have never denied, but have confessed and ac-

known in the presence of numerous persons, that our father, and late Charles Bent, deceased, had equal right with the said — — was fully and entirely with themselves equal owners in his lifetime of the one undivided third part of the said grant of land, and that such was the verbal understanding in all good faith between our deceased father and said grantees; and further your orator and oratrixes show unto your honor that since the death of their late father, Charles Bent, they, the said grantees of the said tract of land granted as aforesaid, have confessed and acknowledged, in the presence of witnesses, the fact notoriously known that your orator and oratrixes, as the coheirs and heiresses of the said Charles Bent, deceased, are entitled to the one undivided third part, all of which your orator and oratrixes is prepared to verify by sufficient and competent testimony.

And your orator and oratrixes further show unto your honor that they have frequently applied to and requested the said Guadalupe Miranda and Charles Beaubien to join and concur with your orator and oratrixes in making a fair, just and equal partition of the said premises between them, the said defendants, Guadalupe Miranda and Charles Meaubien and others now holding under the same and wrongfully and to the injury of your orators and oratrixes, occupying to their own exclusive use the said lands hereinbefore described, that there should be a just and equitable division of one-third of said property to each the said Guadalupe Miranda and to the said Charles Beaubien and their respective assigns, and the other third to your orator and oratrixes to be allot-ed, held and enjoyed jointly by them. And your orator and oratrixes well hoped that the said Guadalupe Miranda and Charles Beaucien and their assigns would have complied with such, their reasonable request as in justice and equity it ought to have been.

But now so it is, may it please your honor, that the said Guadalupe Miranda and Charles Beaubien, combining and confederating to and with Lucien B. Maxwell, Joseph Pley, and with divers other persons, at present unknown to your orators and oratrixes, whose names when discovered your orators and oratrixes, pray they may be at liberty to insert herein with apt words to charge them as parties defendants hereto, as are hereby charged; the said Guadalupe Miranda, Charles Beaubien, Lucien B. Maxwell and Joseph Pley, and as contriving how to wrong and injure your orators and oratrixes in the premises. They, the said Guadalupe Miranda, Charles Beaubien and others herein made defendants, absolutely refuse to comply with such request, and they the said defendants at times pretended that your orators and oratrixes have no right to said one undivided third of said property or offer them with interest to defraud and wrong your orators and oratrixes, such parts of said grant of lands as they are comparatively valueless, in comparison to those parts of said lands now occupied and used for the sole behoof and benefit of the said defendants, regardless of the first rights of your orators and oratrixes. And as whereas your orators and oratrixes charge, and so the truth is, that a fair and just partition for said grant of land, according to the intent thereof,

and according to equity, right and good conscience, will tend greatly to the benefit and advantage of your orators and oratrixes as well as them, the said defendants, in defining what the rights of all the parties hereto actually are, but they the said defendants under divers, frivolous pretenses, absolutely refuse to join or concur with our orators and oratrixes therein.

All which actions, doings, pretenses and refusals are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator and oratrixes in the premises.

187 In consideration whereof, and forasmuch as your orator- and oratrixes can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizable and relievable. To the end therefore that the said Guadalupe Miranda, Charles Beaubien, Lucien B. Maxwell and Joseph Pley, and other persons now unknown, when discovered, their confederates when discovered, may, upon their several and respective corporal oaths, to the best and utmost of their several and respective knowledge, remembrance; information and belief, true, direct and perfect answers make to all and singular the matters aforesaid; and that as fully and perfectly as — the same were here repeated, and they and every of them distinctly interrogated thereto, and more especially that the said confederates may, in manner aforesaid; answer and set forth whether the said orators and oratrixes have not a full and equitable one-third part or share — may be allotted and conveyed unto your orators and oratrixes, Alfred Bent, Estefana Hicklin and her husband, Alexander Hicklin, and Teresina Bent, a minor in charge to her first friend, Ceran St. Vrain, and their heirs and assigns.

That one other full and equitable third part or share may be allotted and conveyed to the said Guadalupe Miranda, his heirs and assigns, and a like equal one-third part to the said Charles Beaubien, his heirs and assigns, who are the defendants in this suit, and that your orators and oratrixes, Alfred Bent, Estefana Hicklin and her husband, Alexander Hicklin, and Teresa Bent, a minor, by her first friend, Ceran St. Vrain, may hold and enjoy their said joint allotment of one equal and full third part of

188 said premises according to the nature thereof, jointly, and that all proper and necessary conveyances and assurances may be executed for carrying such partition into effect, and that your orators and oratrixes may have such further or other relief in the premises as the nature of the circumstances of this case may require, and to your honor shall seem meet. And may it please your honor to grant to your orator- and oratrixes a writ of subpoena, to be directed to the said Guadalupe Miranda, a resident of Donna Ana county, Charles Beaubien, Lucien B. Maxwell and Joseph Pley, residents of the county of Taos, thereby commanding them on a certain day and under a certain pain therein to be limited, personally, to be and appear before your honorable court, and then and there full, true, direct and perfect answers make to all and singular the premises; and further to stand to, perform and abide such fur-

ther order, direction and decree therein as to your honor shall seem meet and your orator- and oratrixes shall ever pray, etc.

SMITH & HOUGHTON, *Solicitors*.

The affiant, Alfred Bent, one of the complainants in the foregoing bill, on his oath, declares that the matters and things therein set forth, so far as they come within his own knowledge, are true; and that so far as he has been informed of the same by others, he believes them to be true.

ALFRED BENT.

Sworn and subscribed to before me this twelfth day of September A. D. 1859.

[SEAL.]

JAMES BARRY, *Clerk*.

189 A general demurrer to this bill was interposed and over-ruled April 12th, 1860.

Afterwards, on May 8th, 1860, said complainants filed their amended bill as follows:

TERRITORY OF NEW MEXICO, }
Second Judicial District, County of Taos. }

District Court, April Term, 1860.

The amended bill of complaint of Alfred Bent, Estafana Hicklin, wife of Alexander Hicklin, and Alexander Hicklin, her husband, and Teresina Bent, by Ceran St. Brain, her next friend, all of the county and district aforesaid, against Charles Beaubien, a resident of said county of Taos, and Lucien B. Maxwell and Jose Pley, of the county of Mora, in said district, and Guadalupe Miranda, a resident of the county of Donna Ana, in the Territory aforesaid.

To the Honorable William G. Blackwood, presiding judge of said district court, in chancery sitting:

Humbly complaining, your petitioners, Alfred Bent, Estafana Hicklin and Teresina Bent, by her next friend, Ceran St. Vrain and Alexander Hicklin, the husband of Estafana Hicklin, sheweth unto your honor that in or about the year A. D. one thousand eight hundred and forty-three, Guadalupe Miranda and Charles Beaubien, who are prayed to be made parties defendants to this bill of complaint, desired to obtain a grant of lands from the Mexican government, and applied to one Charles Bent, the natural father of your petitioners, Alfred Bent, Estefana Hicklin and Teresina Bent, for his aid and assistance and influence in obtaining for them said grant of lands, agreeing with the said Charles Bent that if the said Charles Bent would lend his aid, assistance and labor in and about the procuring said grant of lands from the Mexican government, that they, the said Beaubien and Miranda would, in consideration thereof, give to him, the said Charles Bent, one undivided third interest in said lands when so obtained.

Your petitioners would further show unto your honor that, at the solicitation of the said Beaubien and Miranda, that said Charles Bent did, in consideration of the proposition so made by the said defendants to him, lend his services, influence and means in and about the prosecuting the application of the said Beaubien and Miranda for a grant of lands from the Mexican government, and by the labor, services, means and influence of him, the said Charles Bent did, about the year aforesaid, to wit, 1843, obtained from the Mexican government a grant or merced of lands in due form of law, granting to the said Beaubien and Miranda a certain district of country situated in the district aforesaid and commonly called and known as the Rayado grant, a copy of which grant is hereto annexed, marked Exhibit "A," and prayed to be taken as a part of this bill, with leave to refer thereto as often as may be necessary.

Your petitioners would further show unto your honor that after said grant or merced was obtained, and the said Beaubien and Miranda were placed in possession thereof, they, the said Beaubien and Miranda, acknowledged the great services rendered them by the said Charles Bent, and also that the said Charles Bent had an equal interest in said grant of lands with themselves.

Your petitioners further show unto your honor that in the year A. D. one thousand eight hundred and forty-seven, the said Charles Bent departed this life leaving no legitimate descendants of his body, but leaving your petitioners, Alfred Bent, Estefana Bent, who afterwards intermarried with Alexander Hicklin, and Teresina Bent, his natural children and heirs to his estate, and left no other heirs descendants of his body.

Your petitioners further show unto your honor that after the decease of the said Charles Bent, the said Beaubien and Miranda, contriving to deceive and defraud your petitioners of their rights as heirs-at-law of the said Charles Bent, and well knowing that your petitioners, Alfred Bent, Estefana Hicklin and Teresina Bent were the only rightful heirs to the interest of said Charles Bent, deceased, and well knowing that the said Charles Bent at the time of his death was rightfully entitled to an interest of one undivided third part of said grant or merced of lands when applied to by your petitioners as the legal heirs and descendants of said Charles Bent, to make an equitable division of said lands between them, the said Beaubien and Miranda, and your petitioners as the heirs of the said Charles Bent, deceased, each taking share and share alike; that is to say, the said Beaubien the one undivided third part, the said Miranda the one undivided third part, and your petitioners, Alfred Bent, Estefana Hicklin and Teresina Bent, one undivided third part among them as the heirs-at-law of said Chas. Bent, deceased, offered your petitioners such part of said grant only as to them were valueless, and comparatively so to your petitioners. The said Beaubien and Miranda still holding out inducements to your petitioners that they would make a fair and equitable division of said grant with them in accordance with the agreement made with the said Charles Bent deceased.

But so it is, may it please your honor, that as often as your peti-

tioners have applied to the said Beaubien and Miranda for a fair and equitable division of said lands, they have acknowledged the rights of your petitioners, but contriving to defraud your
 192 petitioners in the premises, have repeated to them the same offers, hoping thereby to induce your petitioners not to assert their rights in a court of equity.

Your petitioners further show that the said Bea-bien and Miranda, not regarding their obligation to the said Charles Bent, deceased, nor the right of your petitioners as the *one* heir- of said Bent, have sold to one Lucien B. Maxwell and Jose Pley, large tracts of land within the boundaries of said grant, who have taken possession thereof, and are now in the enjoyment of the same, regardless of the rights and interests of your petitioners, the said Lucien B. Maxwell and one Jose Pley are now combining and confederating with the said Beaubien and Miranda to defraud and cheat your petitioners out of their just right, and interests in said grant or merced of land.

Your petitioners therefore pray that the said Lucien B. Maxwell and Jose Pley may be made parties defendant to this their bill of complaint.

And now may it please your honor, that since your petitioners are not willing to accept from said Beaubien and Miranda, such parts of said grant of land as they are willing to give them in satisfaction of their interest as heirs of law of the said Charles Bent, deceased, wholly and entirely refuse to make any partition of said lands with your petitioners, all of which pretences and refusals are contrary to equity and good conscience, and tending to the manifest wrong and injury of your petitioners in the premises.

In consideration whereof, and forasmuch as your petitioners can have adequate relief in a court of equity only; therefore that the said Charles Beaubien Guadalupe Miranda, Lucien B. Maxwell and Jose Pley and all other persons, their confederates when discovered, may upon their respective corporal oaths, full, true and correct answers make unto all and singular the allegations in this bills
 193 contained, and upon the premises being found true, and that

your petitioners are justly entitled to one undivided third part of said grant, that an account may be taken of all the rents and profits of said lands under the direction of this honorable court, and that a just and equitable partition of all the lands in said grant or merced, be made between the parties interested therein, and that your honor appoint a commissioner to convey the one undivided third part of said lands to which your petitioners may be entitled as well in value and interest as in quantity to them. And that this honorable court may decree to your petitioners according to their respective rights, their said portion or interest in and to said grant or merced, and to their heirs in fee-simple forever, and that your honor will grant such other and further relief as in equity and in good conscience your petitioners may be entitled to, and your petitioners will ever pray, etc.

ASHURST & TOMPKINS,
Solicitors for Complainants.

194 After demurrers had been interposed and overruled the defendants answered the bill. Miranda's answer was made May 15th, 1860, as follows:

And be it further remembered, that with the papers filed in this cause, as found, the following paper, purporting to be an answer of the defendant, Guadalupe Miranda, to the bill of complaint herein, which answer is in the words and figures following, to wit:

TERRITORY OF NEW MEXICO, }
County of Taos. }

In the District Court, September Term, A. D. 1860.

ALFRED BENT *et al.*, Heirs of Charles Bent, } Bill in Chancery for
vs. } Partition, etc.
CHARLES BEAUBIEN *et al.*

The answer and disclaimer of Guadalupe Miranda, one of the defendants, to the bill of complaint of Alfred Bent and others against Charles Beaubien, Guadalupe Miranda, and others.

195 This defendant saving and reserving to himself, now and at all times hereafter, all manner of advantage and benefit of exception, and otherwise that can or may be had and taken to the many untruths, uncertainties, and imperfections in the said complainants' bill of complaint contained for answer thereto, or unto so much or such part thereof as is material for this defendant to make answer unto, he answers and says that it is true, as charged in plaintiffs' bill, that the sitio of land as described in plaintiffs' bill was granted unto the said Beaubien and himself, as therein alleged, and knows that said Beaubien expressed a desire to invite Charles Bent, deceased, to participate in said grant, or sitio, but knows of no further interest or connection which the said Bent ever had in and to said grant and sitio.

This respondent further saith that he hath heretofore for a consideration, greatly under the value of his original and real interest in and to said grant or sitio sold and transferred by a quitclaim deed, all of his said right, title and interest to Lucien B. Maxwell, one of the defendants in said bill, and therefore saith that he doth fully and absolutely disclaim all manner of right, title and interest, whatsoever in and to said grant or sitio in said bill described and in and to every part thereof, and this respondent doth deny all and all manner of unlawful and fraudulent combination and confederacy, unjustly charged against him in and by the said bill of complaint without that any other matter or thing in said bill contained material or necessary for this defendant to make answer unto and not herein well and sufficiently answered unto, confessed or avoided, traversed and denied, is true, all which matters and things

196 this respondent is ready to aver, maintain, and prove as this honorable court shall award, and humbly prays to be hence

dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

S. M. BAIRD,
Attorney for the Defendant Miranda.

Guadalupe Miranda maketh oath and saith that the matters and things in the foregoing answer are true.

GUADALUPE MIRANDA.

Sworn to and subscribed before me this — day of March, A. D. 1860.

Sworn to and subscribed before me this 15th day of May, 1860.
SAMUEL ELLISON, *Clerk.*

197 Beaubien's answer was made September 6th, 1860, as follows:

Copy of Answer of Charles Beaubien to Foregoing Bill.

UNITED STATES OF AMERICA, }
Territory of New Mexico, County of Taos, ss:

In the District Court for the Second Judicial District in said Territory Held for said County, at September Term, A. D. 1860.

198 ALFRED BENT and Others }
vs. } Chancery.
CHARLES BEAUBIEN and Others. }

And the said Charles Beaubien, saving and reserving to himself all and all manner of exception to the manifold errors, imperfections and uncertainties in the plaintiffs' bill contained for answer thereto, or so much thereof as he is advised, it is sufficient for him to answer, answering, says, that it is true as stated in said petition that the tract of land therein described was granted to said Beaubien and Miranda by the Mexican government at the time mentioned in said bill of complaint, but it is not true that it was obtained by means of the influence of said Charles Bent, nor did he or said Miranda, to his knowledge, ever solicit or apply to said Charles Bent for the use of his influence for the purpose of obtaining the grant aforesaid nor did the said Charles Beaubien or Guadalupe Miranda ever offer to said Charles Bent to give him any portion of said land so granted, in consideration of the aid or influence of said Charles Bent in obtaining the said grant. That the said grant was obtained chiefly by means of the influence of said Miranda, then secretary of the Territory and residing at Santa Fé, a Mexican of intelligence and wealth, and at that time on terms of great friendship and confidence with the Mexican government of the Territory, and also as this respondent believes for the reasons set forth in the petition and stated by the governor in making the donation, as by reference to exhibits filed with plaintiffs' bill will more fully appear; whereas the said Charles Bent was then and up

to the time of his death, a citizen of the United States and resided far from the capital, with few opportunities for intercourse
199 with said Mexican government. That at this time a very warm and cordial friendship existed between the said Charles Bent and this respondent, and this respondent thinks it probable that said Charles Bent may have conversed with the Mexican government in favor of granting him his said claim, but whether he did so or not this respondent does not know. That while his petition was pending before the Mexican government for the grant of land mentioned in said bill, he conversed frequently with said Charles Bent upon the subject, and in one of these conversations told said Charles Bent that if he obtained said grant, he would make him a present of one-fourth part thereof, but did not then state in what part of said tract, nor that it should be an undivided third or fourth part, nor did he so state at any time or in any other conversation with Charles Bent. Neither did said Charles Beaubien or said Miranda, to his knowledge, after said grant was obtained, and they were placed in possession thereof, acknowledge the services of said Charles Bent in the premises or that he had an equal interest with them in said claim. That said Charles Bent did at the time mentioned in said bill of complaint and from the time of the granting of said land up to the time of the death of said Charles Bent, this respondent did not offer nor did said Charles Bent request of this respondent that he would carry into effect the verbal promise aforesaid, by designating the fourth part which this respondent had promised to give to said Charles Bent. That after the death of said Charles Bent this respondent's kind feeling for him and regard for his children, induced in him a desire to benefit them, and knowing
200 them to be his natural children and believing them not to be heirs-at-law to their said father upon that account believing also that by donating the same to said plaintiff, he would be carrying out what he thought would be the wishes of their deceased father; he laid off and designated and offered to donate to said complainants the one-fourth of said tract, at a point at which he considered valuable, but his offer was met by them with a refusal and a claim on their part of one undivided third portion of said tract as a matter of right, which this respondent refused to consider.

Your respondent further states that at the time said grant was made to your respondent and said Miranda, the same was an uncultivated wilderness, surrounded by hostile Indians and for this reason utterly uninhabitable, but that since then it has slowly and gradually become valuable, and this increased value has been caused chiefly by the labor and capital and diligence of this respondent and the defendant, Lucien B. Maxwell, to whom said defendant, Beaubien, had sold a portion of said land, and of other tenants and purchasers under said Maxwell, during the period of years and under circumstances of danger, risk and exposure which few would have undertaken for the original value of said land. And this defendant, Beaubien, here states that he, the said Beaubien, and said defendant Maxwell, Jose Pley and others, tenants and purchasers, as

aforesaid, have expended on said tract of land in labor and capital as aforesaid an amount not less than twelve thousand dollars, and also that said defendants, Beaubien and Miranda, have expended in the defense of the lawsuit referred to in exhibit to complain-ts' bill, as also remunerating the services of counsel before the surveyor of said Territory, in procuring the approval of said claim, the further sum 200½ of two hundred dollars, in all of which expenditures of money, capital and labor so paid out and expended by said defendants Beaubien, Maxwell and others, neither the said complainants nor their said father have ever shared or offered to share, although the same were matters of public notoriety, and this respondent never promised during this long period of time that his kindly and friendly disposition toward said complainants, and their said father was to be repaid by making use of it as a pretext to urge a claim so evidently inequitable and unjust. This respondent also denies all fraud, collusion, confederacy or combination with intent to defraud said complainants of their rights, so unjustly charged upon him in said bill of complaint, without this that any other matter or thing in said bill contained material or necessary for this defendant to answer and not herein well and sufficiently answered, confessed, avoid-, traversed or denied is true, all which matters and things this respondent is ready to aver, maintain or prove, as this honorable court may direct, and humbly to be dismissed with his reasonable costs and charges by him in his behalf most wrongfully sustained, and will ever pray.

BAIRD & WHEATON,
Solicitors for Defendant Beaubien.

TERRITORY OF NEW MEXICO, } ss.:
County of Taos,

Charles Beaubien, having been duly sworn, states that the matters and things set forth and contained in the above answer, as derived from his own knowledge, are true, and those stated as derived from the knowledge of others he believes to be true.

CHARLES BEAUBIEN.

201 Sworn to and subscribed to before me, this 6th day of September, A. D. 1860.

WILLIAM G. BLACKWOOD, *Judge.*

UNITED STATES OF MERICA, }
Territory of New Mexico.

I, William Breeden, clerk of the first judicial district court of said Territory, do hereby certify that the above and foregoing is a true and perfect copy of the original paper on file in my office.

Witness my hand and the seal of said court this 11th day of May, A. D. 1872.

[Seal Jud. Dist. Court, N. M.]

W. M. BREEDEN, *Clerk.*

Copy of Answer of Lucien B. Maxwell.

UNITED STATES OF AMERICA, }
 Territory of New Mexico, County of Taos, } ss :

In the District Court for the Second Judicial District, Held for said County, at September Term, 1860.

ALFRED BENT *et als.* }
 vs. } Chancery.
 CHARLES BEAUBIEN *et als.* }

The defendant Lucien B. Maxwell, saving and reserving to himself all, and all manner of benefit of exception that can or may be taken to the manifold errors, uncertainties and imperfections in plaintiffs' bill contained for answer, thereto or to so much thereof as he is advised is sufficient to answer, answering says: That
 202 it is true as therein alleged that the tract of land therein described was granted to said Beaubien and Miranda by the Mexican government; that it is also true that he now occupies a portion of said land as stated in said bill, and that he occupies it by reason of a purchase made of a portion of the claim of said Charles Beaubien, shortly after the making of said grant and also of a purchase made by him, the said Maxwell, of the whole claim of said Miranda at a more recent period, which will appear more fully by the deeds made by said Beaubien and Miranda to said Maxwell, prayed to be made a part of this answer and be produced whenever they may be hereafter required; that he purchased the same in good faith and for a valuable consideration and has since sold a portion of the same to defendant, Joseph Pley, also for a valuable consideration; that he knows nothing of any contract or agreement between said Beaubien and Miranda and said Charles Bent, such as set forth in said bill, nor does he know of any transactions between said Charles Bent and said Beaubien and Miranda of the character mentioned in said bill of complaint, nor by what influences said grant was obtained by said Beaubien and Miranda from the Mexican government; that he has no other or further claim to said land other than stated in this answer. He also denies all fraud or conclusion or combination or confederation as charged upon him in said bill of complaint, without this that any other matter or thing in said bill contained material or necessary for this defendant to answer, and not herein well and sufficiently answered, confessed, avoided, traversed or denied is true. All which matters and things this respondent is ready to aver, maintain or prove as
 203 this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges by him in this behalf most wrongfully sustained, and will ever pray, etc.

WHEATON.

For Respondent Maxwell.

TERRITORY OF NEW MEXICO, } ss:
 County of Taos,

Lucien B. Maxwell makes oath and say-, that the matter and things above, in his answer set forth and contained, are true.

L. B. MAXWELL.

Subscribed and sworn to before me, this 4th day of September, A. D. 1860.

WM. G. BLACKWOOD,
*Judge of the Second Judicial District of the
 Territory of New Mexico.*

Joseph Pley's answer was made April 7th, 1860, as follows :

Copy of Answer of Joseph Pley.

ALFRED BENT and Others }
 vs. } Chancery.
 CHARLES BEAUBIEN and Others. }

204 In the District Court for the Second Judicial District in the Territory of New Mexico for the County of Taos.

And the said Joseph Pley, saving and reserving to himself all and all manner of right of exception to the manifold errors, imperfections and inconsistencies in the complainants' bill contained for answer thereto, or so much thereof as he has been advised, it is sufficient for him to answer answering, says :

That about the month of June, in the year of our Lord one thousand eight hundred and fifty-nine, he purchased of Lucien B. Maxwell, a portion of the land alluded to and set forth in complainants' bill, including a large part of the land on the River Rayado, bounded as follows: that he purchased the same of said Maxwell in good faith, for a valuable consideration, to wit: the sum of seven thousand dollars, and upon the payment thereof, took possession of the land so purchased, and now resides thereon.

That he knows nothing of the claim of said complainants at the time of said purchase and up to the present time, except as he is informed by the allegations in said bill of complaint. He denies all fraud combination or confederacy as set forth in said bill, and denies all knowledge of the matters and things in said bill contained. Prays to be dismissed with his reasonable costs by him in this behalf most wrongfully sustained.

JOSEPH PLEY.

Sworn to and subscribed before me this seventh day of April, 1860.

WM. G. BLACKWOOD, *Judge.*

205 Replications to these several answers were duly filed, and the cause came to hearing in 1865. No evidence appears in

the record, but the decree which follows recites that the cause was heard upon the pleadings and testimony on file as taken in the cause, the files in said cause having been lost or misplaced, and only the pleadings having been found after the filing of the Maxwell Company's bill in 1870. On June 3rd, 1865, an interlocutory decree was made and entered of record in said cause as follows:

United States District Court, County of Taos, September Term, 1, 1865.

ALFRED BENT, ESTEFANA HICKLIN and ALEX-
ander Hicklin, Her Husband; Teresina
Bent, Alias Teresa T. Bent, and Aloys
Scheurick, Her Husband, and also by Her
Next Friend, Ceran St. Vrain,

vs.

GUADALUPE MIRANDA, JOSEPH POEY, LUZ
Beaubien and Lucien B. Maxwell, Her
Husband, and the said Maxwell; Leonor
Beaubien, Petra Beaubien and Jesus G.
Abreu, Her Husband; Teodora Beaubien
and Frederick Miller, Her Husband; Juana
Beaubien and Joseph Clothier, Her Hus-
band, and Pablo Beaubien, Minor, and the
said Frederick Miller, His Guardian, and
Vidal Trujillo, the Husband of the said
Leonor Beaubien, Defendants.

Bill in Chancery for
Partition of Real
Estate.

And now on this day came the parties by their counsel, and this cause having been at a former term of this court heard upon the bill and amended bill, and the answer thereto, the supplemental bill and the answer, and the testimony herein on file, as taken in this cause, which cause was taken under advisement by the court as to the decree which should be made in the premises, and the court being fully advised, in consideration thereof, therefore, it is ordered, adjudged and decreed by the court that the said complainants, Alfred Bent, Estefana Hicklin, and Teresina, otherwise Teresa T.

206 Bent, be and are hereby declared to be the natural son and daughters of the said Charles Bent in the said bill mentioned, by him begotten upon and conceived and borne of Ygnacio Jamarillo, within the Territory of New Mexico, formerly the department or province of New Mexico, and at the time the said Alfred, Estafana and Teresa were begotten and conceived, no lawful impediment existed to prevent the said Charles Bent and Ygnacio Jamarillo from in due form of law solemnizing a contract of marriage, the one with the other; that as such natural children the said Alfred, Estefana and Teresa, in the absence of any child or heir born in wedlock to the said Charles Bent, became and were at the time of his decease the true and lawful heirs of his body in this Territory, with the full power, right and authority to inherit, succeed to and receive the estate, property, rights and interests of property

of the said Charles Bent in the said Territory, and that as such children and heirs they are justly and lawfully entitled to have, maintain, receive, possess and enjoy all the rights, interest and estate which in law or equity belonged or pertained to the said Charles Bent at the time of his decease, of, in or to the lands, real estate or grant as described and set forth in the complainants' bill and the exhibit therein referred to, which description is as follows, to wit: Commencing below the junction of the Ryado river with the Colorado, thence in a direct line to the east to the first hills, and from thence running parallel with said Colorado river to the north, to a point in front of the junction of the Una de Gato with the said Colorado river, thence following said hills to the east of the said river of the Una de Gato, to the summit of the mesa, thence turning to the northeast along said summit, to the summit of the mountain that separates the waters that flow to the east from those that flow to the west, and from thence following the said mountain to the south of the first ceja, south of the Ryado river, and from thence following the summit of said ceja, east to the place of beginning.

It is further ordered, adjudged and decreed that the said Charles Bent at the time of his decease was justly and equitably entitled and seized of one undivided fourth part of the estate in and to the said tract of land, real estate or grant, and that the said Charles Beaubien and Guadalupe Miranda were at said time so entitled and seized of an equal undivided share of the remaining three-fourths of the said tract or grant.

Furthermore, that the said Alfred, Estefana, and Teresina (alias Teresa T.), upon the decease of their said father, inherited, succeeded to and became seized of the said undivided one-fourth part interest and estate which belonged or pertained to the said Charles Bent in law and equity, in and to the land or real estate in the entire tract or grant aforesaid, at the time of his decease, and that the said Alfred Bent, Estefana and Teresina, are now fully and absolutely entitled to and seized of the undivided one-fourth part of the interest and estate of the said tract of land or grant.

Furthermore, that the said undivided one-fourth part in and to the said tract or grant of land or real estate be and hereby is declared established and confirmed to them, the said Alfred, Estefana and Teresina (alias Teresa T.) and to their heirs and assigns forever, with the full and perfect right, powers and authority to possess and enjoy the same.

It is further ordered, adjudged and decreed that a just and equitable partition be made of the said tract of land or grant between the said Alfred, Estefana and Teresina, and the said daughters and son of the said Charles Beaubien deceased, defendants herein, and Lucien B. Maxwell, the assignee and grantee of the said Guadalupe Miranda, according to the rights, interests and estate hereinabove declared between the respective parties.

Furthermore, that the special commissioners hereinafter appointed to make and allot the said partition shall first take and subscribe an oath before the judge or the clerk of this court,

the clerk of the probate — for the county of Mora, or the justice of the peace within and for the precinct including the county-seat of said county to well and faithfully, without partiality, prejudicial favor or ill will, to the best of their knowledge, understanding, skill and abilities, make a partition and allotment of the said tract of land or grant, between the parties and in the manner or form prescribed and required in this decree, and the said oath so taken and subscribed shall be duly certified by the officer administering the same and by the commissioners, annexed to and returned with the report by them to be made to this court.

That when the oaths shall be so taken and subscribed, the said commissioners shall jointly proceed in person upon the said tract or grant and without any unnecessary delay, and shall inspect the same throughout its extent and especially the streams and springs of water and their capacities, one year with another to supply water for the purpose of irrigating the lands connected with or contiguous to the said streams, susceptible of cultivation and irrigation; the mines and minerals of whatsoever description; the quarries of rock or stones; timber for building, fencing and firewoods; the lands suitable for plowing, planting and sowing; and grounds and — for pasturage.

They shall then make a partition of the said tract or grant, according to quantities, quality and value, and designate and describe the tracts or partitions divided by such descriptions, and natural and artificial objects, or marks or boundaries as shall remain plain and permanent and easily found. They shall part and lay off one-fourth part of the said tract or grant and divide, part and lay off the remaining three-fourths of the same into two equal parts.

209 In making the said partition of one-fourth of the said three-fourths, regard shall be had to the buildings, acequias, cultivation and improvements made by the said Lucien B. Maxwell, upon the said tract or grant of land and nothing shall be credited to the other parties or charged and considered against the said Maxwell for any buildings, acequias, cultivation or improvements made and added to the said grant or tract of land by him or by persons holding and possessing by or through him in good faith. This shall have especial reference to the commencement of this suit upon the twelfth day of September, one thousand eight hundred and fifty-nine, and to the principal places and portions then occupied and improved by him and those by or under him. That in making and allotting the parts therein decreed, ordered and adjudged to be partitioned, the portions which shall be portioned and allotted to the said Maxwell shall include the portions of said tract or grant, which the said Maxwell, or those under or through him, occupied and had cultivated and improved before the commencement of the suit and since continued to occupy and improve, and the chief and principal portions, the said Maxwell has occupied and improved since the commencement of this suit.

In case the said Maxwell since the commencement of this suit has by himself or others in parts of said tract or grant remote from the principal farms and improvements actually occupied by him, made

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slight or temporary cultivation or improvements, which shall include the lands and waters in such manner as to leave not an equitable and just portion of the waters and cultivatable land to be parted to the other parties in this cause, then and in such case, the said remote land and waters included in such improvements or slight cultivations, shall in the partition to be made in this cause be considered and included in the said partition, the same as if the

210 said improvements were not made upon the said lands. In such case the commissioners shall assess the just and true value of the land covered by such improvements without their being added to the said lands, and also the said improvements by themselves exceeding the just and true value of them over and connected with the said lands and report the facts with their general report to this court, carefully noting the different assessed values, so that the court may decree justly and equitably concerning the same between the parties.

Furthermore, when the commissioners shall have parted the tract or grant of land as herein provided, they shall allot the one-fourth part to the said Alfred, Estefana and Teresa, (alias Teresa T.) Bent, and an equal portion of the said three-fourths, the one to the said Lucien B. Maxwell, and the other to the said son and daughters of the said Charles Beaubien, deceased.

In estimating the value of any improvements referred to herein, as made in certain remote places, and under the circumstances specified, the commissioners will also assess and report the value of the rents and profits since such places have been occupied and cultivated.

In parting and allotting to the said Maxwell the portion to be allotted to him, the said commissioners are hereby specially charged to estimate in the partition the lands which include the buildings, acequias, farms and other improvements by him made, or by others through or under him, in good faith, without reference to the value of any of the said improvements, that this provision does not extend to the aforesaid remote places and the improvements hereinbefore specially specified as connected therewith.

It is further ordered, adjudged and decreed that Lucien Stewart, of Taos county, and Vicente Romero and William Kroenig, of the county of Mora, in said Territory, be and they hereby are

211 appointed to execute and perform all the requirements and provisions of this decree, required of and to be done by commissioners, and that they make full, plain and exact report of their proceedings to the next term of this court.

Furthermore, it is ordered, adjudged and decreed that the said complainants pay to the said defendants, Maxwell and the said daughters and son of the said deceased Charles Beaubien, the sum of one hundred dollars, the one-fourth part of the amount expended towards the procuring of the confirmation of the said tract or grant of land by the Government of the United States.

The court now reserves and suspend making its decree as the partition and payment of the costs in this cause, until a future term of the court:

It appearing to the satisfaction of this court, upon the suggestion of the complainants, that since the last term of this court, Leonor Beaubien has been regularly and lawfully divorced from the bonds of matrimony before existing between her and the said Vidal Trujillo, it is ordered by the court that he be and hereby is dismissed from these proceedings, and that the clerk furnish a copy of this decree to the said Maxwell and also to the commissioners, and one for the said son and daughters, should these latter require the same, and that this cause stand continued until the next term of this court.

Signed June 3, 1865.

KIRBY BENEDICT,

Chief Justice.

212 The heirs of Beaubien appear as parties defendant in this decree, Beaubien having died in 1864.

The commissioners appointed by the foregoing decree never acted. Maxwell declared that he would appeal the cause, and, if necessary, carry it to the Supreme Court of the United States. Afterwards the Bent heirs, complainants in said suit, entered into negotiations with Maxwell for a compromise of the litigation on the basis of Maxwell paying them a money consideration to relinquish their claim. It was understood between Alfred Bent and Sheurick, with the consent of their wives and Mrs. Hicklin, that either Alfred Bent or Sheurick or both of them should act in the matter as agents to sell Maxwell, if they could, their interests in the grant for the best price they could get, but never less than \$21,000, or what Beaubien's heirs got. Over-

tures for compromise were made by Alfred Bent, acting for
213 himself and his co-complainants, his two sisters and their husbands, in September or October, 1865, when he went to Maxwell's residence, at Cimarron, to try and make a sale of their interest. These were made with the approval of Judge Houghton, one of their counsel, whom Bent consulted about it, and who told Bent he had better settle for himself and the other heirs by compromise rather than to take the award of the commissioners. Bent demanded \$21,000; Maxwell offered \$18,000. Bent returned to Taos, where his family resided, without having affected a definite agreement with Maxwell as to price. The Bents considered the sale as good as made, but Alfred Bent said to his co-complainants that they could get a few thousand more by being quiet a few days, insisting, however, on having as much as the Beaubien heirs got; they then expected to close the bargain in a few days; were ready to make the deeds as soon as the matter was settled, and the deeds had already been written out by Sheurich, husband of Teresina Bent. Before anything further was done in the matter of the proposed compromise Alfred Bent died, in December, 1865, leaving surviving him his widow, Guadalupe Bent, and three infant children, viz., Charles, Julian, and Alberto Silas, aged respectively six, four, and one year, and on April 12th, 1866, said Guadalupe was appointed by the probate court of Taos county administratrix of the estate of Alfred Bent, and duly qualified as such. A few hours be-

fore said Bent was shot, on December 3rd, 1865, he directed one of the commissioners appointed to make partition to proceed therewith as soon as possible, saying he considered his interest and that of his sisters worth \$150,000.

214 Alfred Bent left a will, which was duly probated, which said will and the record of probate thereof and of the inventory and other proceedings connected with said estate are in words and figures following:

Petition of Guadalupe Bent for Appointment as Administratrix.

To the Honorable Pedro Sanchez, probate judge of the county of Taos, Territory of New Mexico:

215 Your petitioner Guadalupe Bent before your honor respectfully represents that on the — day of the month of — A. D. 1865, my deceased husband Alfred Bent made and executed a testament and last will, as in it expressed, I as his wife which I was, am therein named by him as administratrix and executrix of his hereditary goods, in due course of law I appear before you— honor in order that you may be pleased to order that letters of administration of the estate of my husband according to the form of the statute for such cases made and provided offering to execute the necessary and sufficient bonds required by law, and your petitioner will ever pray, etc.

County of Taos, April 12, 1866.

her
GUADALUPE x BENT.
sign.

TERRITORY OF NEW MEXICO, }
County of Taos. }

I Ynocencio Martinez clerk of the court of probate in and for the county of Taos and Territory of New Mexico, do hereby certify that the foregoing part of one page contains a full true perfect and correct copy of the entire and full petition of Guadalupe Bent to the Hon. Pedro Sanchez then judge of probate for said county for letters of administration on the estate of her deceased husband Alfred Bent which said petition now remains on file and on record in the office of said clerk of said court of probate.

In testimony whereof I have hereunto set my hand and
216 affixed the seal of said court of probate within and for the county of Taos this the — day of December, A. D. 1872.

[SEAL.] YNOCENCIO MARTINEZ, Clerk.

Oath of Guadalupe Bent, Administratrix.

TERRITORY OF NEW MEXICO, }
County of Taos, } ss:

Before me the undersigned clerk of the probate court in and for said county personally appeared Guadalupe Bent and under oath declared that Charles Bent, Julian Bent, and Alberto Silas Bent

are the only children of the deceased Alfred Bent her husband late of this county; that she as lawful administratrix of the estate of her said deceased husband would make a true and perfect inventory of all and each of the goods, real property, chattels, animals, debts, rights and claims; pay all the debts of said estate if any should appear; that she would render full account to the probate court whenever she may be so required relative to the management of the administration of said estate; that she would make an equal distribution of the same among the respective legitimate heirs as she may be required, and that in general she would discharge in all things her legal duty as administratrix of the estate until the conclusion of such administration.

her
GUADALUPE (x) BENT.
sign.

Sworn to and subscribed before me, this 12th day of April, A. D. 1866.

[SEAL.]

YNOCENCIO MARTINEZ,
Clerk of the Probate Court.

217 TERRITORY OF NEW MEXICO, {
County of Taos. }

I, Ynocencio Martinez, clerk of the court of probate within and for the county of Taos and Territory of New Mexico, do hereby certify that the foregoing part of one page of writing is a full, complete, correct and perfect copy of the original oath of administration of Guadalupe Bent as administratrix of the estate of Alfred Bent, deceased, taken in full and complete from the said original which remains on file and of record in the office of the said clerk of the court of probate.

In testimony whereof I have hereunto set my hand and affixed the seal of said court of probate this the — day of December, A. D. 1872.

[SEAL.]

YNOCENCIO MARTINEZ, *Clerk.*

Probate of Will of Alfred Bent.

DON FERNANDO DE TAOS, N. M.,
WEDNESDAY, the 6th Day of March, 1867.

At ten o'clock in the forenoon the court met.

Present: The Hon. Pedro Sanches, judge of probate; Leandro Martinez, clerk, and Pablo Martinez, deputy sheriff.

The order of business is as follows:

The administrators of the estate of Alfred Bent, deceased, presented the will of said deceased for approval. The court examined said will and the witnesses in it mentioned, and finding it correct according to law, approved it and ordered that it be recorded in this office.

218 TERRITORY OF NEW MEXICO, } ss :
County of Taos,

I, the undersigned, J. U. Shade, clerk of the probate court of said county, do hereby certify that the above is a true and perfect copy from the record of the proceedings of said court at the March term thereof, 1867, as the same appears in Book C, No. 2, of the records of the said court, on page 253.

Witness my hand and the seal of said court this 3rd day of October, 1884.

[SEAL.]

J. U. SHADE, *Clerk.*

Will of Alfred Bent, Deceased.

In the name of God Amen.

I Alfred Bent, being of sound mind and memory, and knowing the uncertainty of life and the certainty of death do hereby devise and decree as my last will and testament, in the presence of the subscribing witnesses, as follows to wit: first, I give and bequeath unto my wife Guadalupe Long Bent; for the maintainance of her and my three children Charles, William and Silas Bent, all of my real and personal property—money goods and effects after my just debts have been paid which are as follows to wit—to North and Scott of St. Louis the sum of five hundred and sixty-nine dollars with interest; to Mrs. S. Beuthner and L. B. Maxwell sixty dollars—to David Webster the sum of four dollars; which debts I desire shall be paid. I desire that my said wife shall be my executor and may join with her if necessary any person who may desire for her benefit and that of my children heirs as aforesaid.

219 In testimony whereof I have this 9th day of December, A. D. 1865, subscribed my name in the presence of subscribing witnesses.

Witnesses:

Codicil—The debt due North and Scott of the city of St. Louis is jointly due by myself and Horatio Long of Colorado Territory.

(Signed)

ALFRED BENT.

FERNANDO MAXWELL.

W. A. NITTERIDGE.

JOS. S. HURT.

CHARLES HART.

Inventory of the Estate of Alfred Bent, Deceased.

Inventory which contains the goods of the deceased Alfred Bent, late of the county of Taos, commenced this 6th day of March, A. D. 1867.

Half of house, six rooms (at the rancho).....	\$300 00
200 varas of tillable land.....	200 00
27 cows at 20 dollars.....	540 00

8 steers at 20 dollars.....	160 00
90 fanegas wheat at \$2.00 dollars....	180 00
14 fanegas of corn at \$2.00.....	28 00
Money	500 00
By note of Lucien B. Maxwell.....	5,000 00
The eighteenth part of twenty-one miles square of land situated in the Territory of Colorado on the Las Animas river, Huerfano and other small streams, under our oath and having investigated the condition and situation of said land we value it a little more or less at five thousand dollars.....	
220	5,000 00
Total amount.....	\$11,908 00

This inventory was finished this 6th day of March A. D. 1867.

GUADALUPE THOMPSON NÉE LONG,

Administratrix.

YNOCENCIO MARTINEZ AND

JUAN B. LA ROUX, *Appraisers.*

This inventory has been examined and approved this 6th day of March, 1867.

PEDRO SANCHES,

Probate Judge.

TERRITORY OF NEW MEXICO, } ss:
County of Taos,

I certify that the foregoing are true and exact copies of the will and inventory of the estate of Alfred Bent, deceased.

In witness whereof, I have hereunto set my name and the seal of the probate court, this 6th day of March, 1867.

LEANDRO MARTINEZ,

Clerk of the Probate Court.

[SEAL.]

TERRITORY OF NEW MEXICO, } ss:
County of Taos,

221 I, the undersigned J. U. Shade clerk of the probate court of said county hereby certify that the foregoing three pages and five lines contain a full true and perfect copy of the will of Alfred Bent and of the inventory of his estate as the same appears of record in my office in Book B, No. 4, of Records of Wills and Administrations on pages 216 and 217.

Witness my hand and seal of said court this 3rd day of October, 1884.

[SEAL.]

J. U. SHADE, *Clerk.*

Allowance of Account Against Estate of Alfred Bent.

To Guadalupe Thompson, administratrix of Alfred C. Bent, late of the town of El Rancho, in the county of Taos and Territory of New Mexico, deceased :

Take notice that on the first day of the next ensuing term of the court of probate within and for the county of Taos aforesaid I shall

present for allowance against the estate of Alfred C. Bent, deceased a claim for the sum of one thousand seven hundred and ninety dollars, founded on account of which the following is a copy :

TRINIDAD, C. T., Oct. 25, 1867.

Estate of Alfred Bent, dec'd, to Horatio Long, Dr.

1867. To cash had and received \$1,790 00

(Signed)

HORATIO LONG.

TERRITORY OF COLORADO, }
County of Las Animas, } ss :

222 I the undersigned administratrix of the estate of Alfred C. Bent deceased hereby acknowledge service of foregoing notice of demand against the said estate this twenty-fifth day of October, A. D. 1867.

(Signed)

GUADALUPE THOMPSON,

Administratrix of the Estate of Alfred C. Bent, Deceased.

JOSE MA. MARTINEZ.

TERRITORY OF COLORADO, }
County of Las Animas, } ss :

This day personally appeared before me the undersigned a United States commissioner within and for the third judicial district of the Territory of Colorado aforesaid, Horatio Long, and being duly sworn on his oath according to law says that — the best of his knowledge and belief he has given credits to the estate of Alfred C. Bent, deceased, for all payments or offsets to which it is entitled and that the balance there claimed is justly due.

(Signed)

HORATIO LONG.

Sworn to and subscribed before me, this 25th day of October, A. D. 1867.

A. W. ARCHIBALD,

United States Commissioner in and for the Third

Judicial District of the Territory of Colorado.

TERRITORY OF COLORADO, }
County of Las Animas, } ss :

I, the undersigned, administratrix of the estate of Alfred C. Bent, deceased, hereby certify that within my own personal knowledge the foregoing demand of Horatio Long is true in all its particulars, and that the sum of one thousand and seven hundred and ninety dollars is justly due, and I hereby consent to the allowance of a judgment for the same without the necessity for my personal appearance in the said court of probate.

Witness my hand hereunto set this 25th day of October, A. D. 1867.

(Signed) GUADALUPE THOMPSON,
*Administratrix of All and Singular the Goods and Chattels,
 Rights and Credits that were of Alfred C. Bent, Deceased.*

Witness:

JOSE MA. MARTINEZ.

TERRITORY OF NEW MEXICO, } ss :
 County of Taos,

Be it remembered that George Thompson being duly sworn in open court on this 5th day of November, A. D. 1867, on his oath says that he knows the foregoing affidavits, and other parts of the above proceedings were had as recorded; that he personally knows the parties thereto; and was personally present at the execution of the same; and that the same are true in all particulars as above stated.

G. W. THOMPSON.

Sworn to and subscribed in open court at our November term, A. D. 1867.

JUAN SANTISTEVAN,
Probate Judge.

Examined and approved this 5th day of November, A. D. 1867.

JUAN SANTISTEVAN,
Probate Judge.

224 The said will and foregoing record of proceedings in the probate court of Taos county, New Mexico, were not introduced in evidence in the present litigation until at the close of the testimony taken under the Maxwell Company's amended bill and the Bent heirs' bill, in 1866, and after the case of Thompson vs. Maxwell, 3 N. M., 269, had been decided by the supreme court of New Mexico and remanded to the district court.

Beaubien had left six children; Maxwell married one of them, and purchased the interest of the other five for a consideration of not more than \$3,500 each, at the following dates: Juana and her husband, Joseph Clouthier, and Isadora and her husband, Frederick Muller, April 4th, 1864; Eleanor and her husband, Vidal Trujillo, July 20th, 1864; Petra and her husband, Jesus G. Abreu, February 1st, 1867; Paul Beaubien, January 1st, 1870. Muller and Clouthier were merchants residing at Taos; Trujillo and Abreu were farmers, stock-raisers, and also had stores; all four of them, as well as Sheurich and Hicklin, the husbands of Alfred Bent's two sisters, were intelligent men, ranked among the best citizens in their community, and were considered men of wealth and influence.

At the April term, 1866, of the district court for Taos county, and on the 9th day of that month, the death of Alfred Bent was suggested by counsel for complainants in the then pending suit, and,

on their motion, his three infant children, Charles Bent, Julian Bent, and Alberto Silas Bent, were made parties complainant by the following order entered of record in said cause :

225 Be it remembered that at a regular term of the district court for the first judicial district of the Territory of New Mexico, begun and held within and for the county of Taos, on the 9th day of April A. D. 1866, on the second day of said term, among other things the following proceedings were had, and were in the words and figures following, to wit :

ALFRED BENT and Others

vs.

THE HEIRS OF CHAS. BEAUBIEN and Others.

} No. 1. In Chancery.

Now on this day came the complainants by their counsel and suggest to the court the death of Alfred Bent, one of the complainants herein, and moves the court for leave to make Chas. Bent, Julian Bent, and Alberto Silas Bent, his children and heirs, parties complainants herein, which said motion is granted by the court, and the said Chas. Bent, Julian Bent and Alberto Silas Bent, are hereby made parties complainant to this bill of complaint.

And afterwards, to wit, on the fourth day of said term of said court, among other things the following proceedings were had, which are in the words and figures following, to wit :

226 The two last above mentioned orders were made at the instance and in accordance with the wish of said Maxwell or his counsel as necessary to the validity of the conveyance.

Afterwards, at the same term, on motion of solicitors for complainants, an order appointing Guadalupe Bent guardian *ad litem*, etc., was made and entered of record in said cause as follows :

ALFRED BENT and Others

vs.

THE HEIRS OF CHARLES BEAUBIEN and Others.

} No. 1. In Chancery.

By agreement of the parties, the continuance of this cause, made herein on a former day of this term of this court, is set aside, and on motion of solicitors for complainants, Guadalupe Bent — hereby appointed guardian *ad litem*, and commissioner in chancery, for the minors of Alfred Bent, in this cause, with full power to execute deeds, or carry into execution all sales or transfers made of their interest in and to the real estate therein described to Lucien B. Maxwell, one of the defendants in said cause, and this cause stands continued until the next term of this court.

227 In the meantime the negotiations for compromise, which had been interrupted by the death of Alfred Bent, were resumed, the Bent heirs being now represented by Aloys Sheurich, husband of Teresina, one of the adult complainants, who acted in

said negotiations on behalf of his wife, Estefana and her husband, Hicklin, and Guadalupe Bent. A settlement with Maxwell was concluded by Aloys Scheurich, acting for his wife, Mrs. Hicklin and her husband, and Guadalupe Bent as guardian *ad litem* for Alfred's children, which was acceptable to said parties, by which Maxwell was to pay the sum of \$18,000 for the conveyance of the interest or claim of the Bent heirs. The compromise was advised by Merrill Ashurst, the leading counsel for the Bent heirs, the grounds of his advice not being stated. It was accepted and carried out by the adult complainants Teresina and Estefana and their husbands, Sheurich and Hicklin. Sheurich and the other complainants did not consider their claim after the decree of 1865 as being doubtful or uncertain, but made a settlement, one of the reasons therefor being the consideration that the lawsuit involving their interests might drag on a long time and that they were doubtful when the end would be reached, Maxwell having said to Sheurich that he would outlaw them or put them off from court to court, he having means to do so, and having some time before told Sheurich that he paid his attorney \$1,000 to put the case off for six months.

On May 3rd, 1866, in pursuance of said compromise, Guadalupe Bent *née* Long executed a deed to Maxwell for the stated consideration of \$6,000 as follows:

228 (U. S. I. R. S. \$10,000, Taos, N. M., May 3, 1866.)

Know all men by these presents, whereas, I, Guadalupe Bent *née* Long, of the town of El Rancho, in the county of Taos, and Territory of New Mexico, and widow of Alfred Bent, late of the same place, deceased, by virtue of a decree and order of the district court of the United States of America, for the first judicial district, of the Territory of New Mexico, at the April term of said court A. D. 1866, held within and for the said county of Taos, was appointed guardian *ad litem*, and commissioner in chancery for Charles Bent, Julian Bent and Albert Silas Bent, minor heirs of the said Alfred Bent, deceased, as aforesaid; and, whereas, the words of said decree and order of said court are as follows, to wit:

"Territory of New Mexico, First Judicial District Court, County of Taos, April Term, 1866.

ALFRED BENT and Others	}	(No. —.) In Chancery.
<i>vs.</i>		
THE HEIRS OF CHARLES BEAUBIEN and Others.		

"By agreement of the said parties, the continuance of the cause made herein on a former day of the present term of this court, is set aside, and on motion of solicitors for complainant, Guadalupe Bent is hereby appointed guardian *ad litem*, and commissioner in chancery for the minor heirs of Alfred Bent in this cause, with full power to execute deeds; or carrying into execution all sales or transfers made of their interest in and to the real estate therein

described, to Lucien B. Maxwell, one of the defendants in said cause, and that this cause stand continued until the next term of this court," all of which proceedings so had as aforesaid, will

229 fully appear by the records of said court, to which reference is hereby made. Now, therefore, by reason of the premises,

and by virtue of the power and authority on me conferred by the said decree, I, Guadalupe Bent, guardian *ad litem*, and resident as aforesaid, for and in consideration of the sum of six thousand (\$6,000) dollars to me in hand paid by the said Lucien B. Maxwell, of El Cimarron, of the county of Mora and Territory of New Mexico, the receipt of which is hereby acknowledged, have granted, bargained and sold, conveyed, confirmed and transferred, as by these presents, I do grant, bargain and sell, convey, confirm and transfer unto the said Lucien B. Maxwell, his heirs and assigns, the following-described real estate, situate, lying and being in the aforesaid county of Mora, and Territory of New Mexico, and known and described as the "Rayado grant," heretofore granted to Charles Beaubien, and Guadalupe Miranda by Governor Armijo, on the eleventh day of January, A. D. 1841, and which is bounded and described as follows, to wit: Beginning on the east bank of the Rio Colorado at a mound of rocks; thence running in a straight line eastward to the first hills to another mound of rocks; thence continuing from south to north on a parallel line with the River Colorado to the third mound of rocks on the northern edge of the table-lands of Chicouca O'Chacuaco; thence running westward and following the edge of the said table-lands of Chacuaco to the top or comb of the Sierra Madre, to the fourth mound of rocks; thence from north to south, following the top of the said Sierra Madre to the Cuesta del Osha, one hundred (100 v.) varas, to the north of the road to Fernandez and to the Laguna Negra to the fifth mound of rocks; thence running anew to the east towards the Rio Colorado, and following the southern edge of the table-lands of Rayado and Gonzalitos to the eastern point of these table-lands to the sixth mound of rocks; and thence following in a northerly direction until the said line strikes the Rio Colorado on the west-
230 ern bank of said river, where the seventh mound of rocks was placed.

To have and to hold the one undivided one-twelfth (one-12th) interest, of, in and to the above-described real estate, together — all and singular, the rights, immunities, hereditaments, privileges and appurtenances thereunto belonging or in anywise appertaining unto the said Lucien B. Maxwell, and his heirs and assigns forever; the said one-twelfth undivided interest being the entire interest, estate, claim and demand of the said Charles Bent, Julian Bent and Alberto Silas Bent said minor heirs of their father, said Albert Bent, deceased, of, in and to the real estate as a child, and one of the heirs of Charles Bent, Senior, late of the Territory of New Mexico, deceased; and I, the said Guadalupe Bent, guardian *ad litem*, do hereby covenant to and with the said Lucien B. Maxwell, his heirs and assigns, that the above-described interest hereby conveyed of, in and to the said real estate, is free and clear from all incumbrances,

and that I, my heirs, executors and administrators, shall and will warrant and defend the title to the same unto the said Lucien B. Maxwell, his heirs and assigns forever, against the lawful claims or demands of all persons whomsoever.

In witness whereof, I have hereunto set my hand and seal this third day of May, A. D. eighteen hundred and sixty-six.

GUADALUPE BENT NÉE LONG, [SEAL.]

Guardian ad Litem of Charles Bent,

Julian Bent, and Albert Silas Bent.

Signed, sealed and delivered in presence of—

ADOLPH LETCHER.

WM. BLACKWOOD.

TERRITORY OF NEW MEXICO, } ss :
County of Taos,

Be it remembered that on the third day of May, A. D. 231 eighteen hundred and sixty-six, personally came before me the undersigned clerk of probate, within and for the county aforesaid, Guadalupe Bent née Long, who is personally known to me to be the same person whose name is subscribed to the foregoing deed of conveyance as party thereto, and she acknowledged that she executed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed the seal of the said court the day and year last above written.

[Seal Probate Court, Taos County, N. M.]

INOCENCIO MARTINEZ,

Clerk of the Court of Probate for the County

of Taos, Territory of New Mexico.

Filed at 3 o'clock p. m. January 16, 1870.

J. LEE, *Clerk.*

TERRITORY OF NEW MEXICO, } ss :
County of Colfax,

I, the undersigned, clerk of the probate court and *ex officio* recorder for said county, Territory aforesaid, do hereby certify that the foregoing is a true and correct — of the instrument as recorded in my office. Deed Book "A," pages 78, 79, 80, and 81.

Witness my hand and official seal, this first day of September, A. D. 1870.

[Seal Probate Court, Colfax Co., N. M.]

JOHN LEE,

Clerk Probate Court and ex Officio Recorder.

232 No other conveyance was made by Guadalupe Bent, the said conveyance having been prepared by counsel for Maxwell after one dictated by counsel for the Beaubien heirs.

On the same day Teresina Sheuruch née Bent, daughter of Charles

Bent and sister of Alfred Bent, executed to Maxwell a like conveyance, conveying a like interest for the recited consideration of \$6,000, with like covenants; and afterwards, on May 31st, 1866, Estefana Hicklin, also a sister of Alfred Bent and daughter of Charles Bent, joined by her husband, Alexander Hicklin, executed to Maxwell a like conveyance of a like interest for a recited consideration of \$6,000, with like covenants.

Afterwards, at the September term, 1866, of the said district court for Taos county, on September 13th, 1866, a decree was made and entered of record in said cause as follows:

And afterwards, to wit, at the September term of said court, 1866, begun and held on the 10th of said month of September, and on the 3rd day of said term of said court, among other things the following proceedings were had, which are in the words and figures following, to wit:

GUADALUPE BENT, Guardian *ad Litem* for
Charles Bent, Julian Bent, and Alberto
Silas Bent, Minor Heirs and Children of
Alfred Bent, Deceased; Alexander Hicklin
and Estefana Hicklin, His Wife; Aloys
and Terisa Bent, His Wife,

vs.

LUCIEN B. MAXWELL, FREDERICK MILLER,
Jesus G. Abreu, Executors of the Estate
of Charles Beaubien, Deceased; Luz
Beaubien and Lucien B. Maxwell, Her
Husband; Leonor Beaubien, Teodora
Beaubien and Frederick Miller, Her
Husband; Petra Beaubien and Jesus G.
Abrieu, Her Husband; Juana Beaubien
and Joseph Clothier, Her Husband, and
Pablo Beaubien, by Frederick Miller, His
Guardian.

No. 1. In Chancery.

233 In the District Court for the County of Taos, in Chancery
Sitting.

Whereas an interlocutory decree was rendered at a former term of this court in the above cause, decreeing one-fourth of the land mentioned in the petition herein to the complainants in this cause, and appointing commissioners to divide and set apart the portion so decreed, and whereas said interlocutory decree was never carried into effect, and whereas since the time of the rendition of said decree a mutual agreement has been made between the parties to this cause, settling and determining all the equities in the same:

It is therefore hereby ordered, adjudged and decreed by the mutual consent and agreement of the said complainants as well as of the said defendants in this cause, that the interlocutory decree above mentioned, together with all orders made under and by virtue of the same be set aside; and by the mutual consent and agreement

of the said parties, it is hereby further ordered, adjudged and decreed that the said Lucien B. Maxwell, one of the defendants in this cause, pay to the said complainants the sum of eighteen thousand dollars, to be divided among them *per stirpes*, that is to the said Aloys Scheurick and Teresina Bent, his wife, one-third part, and to Alexander Hicklin and Estefana Bent, his wife, another third part, and to Charles Bent, Julian Bent and Alberto Silas Bent, the children and heirs of Alfred Bent, deceased, the remaining third part, to be equally divided among the said last named and to be paid into the hands of Guadalupe Bent, widow of the — Alfred Bent, deceased, and guardian *ad litem* for said children for the purposes of the said division.

And upon the further consent and agreement of the said parties, it is hereby further ordered, adjudged and decreed, that the said Alexander Hicklin and Estefana Bent, his wife, the said Aloys

234 Scheurick, and Teresina Bent, his wife, and the said Guadalupe Bent, guardian, *ad litem*, for Charles Bent, Julian Bent and Alberto Silas Bent, children and minor heirs of the said Alfred Bent, deceased, within ten days from the day of the date of this decree, make, execute and deliver to the said Lucien B. Maxwell good and sufficient deeds of conveyance of all their right, title, interest, estate, claim and demand of, in and to the lands in controversy in this cause; the said Guadalupe Bent, guardian *ad litem* as aforesaid, in the name of Charles Bent, Julian Bent and Alberto Silas Bent, minor heirs as aforesaid, and the said Alexander Hicklin and Estefana Bent, his wife, and the said Aloys Scheurick and Teresina Bent, his wife, in their own names. And by further consent and agreement between the said parties, it is hereby further ordered, adjudged and decreed, that the costs of this suit shall be paid, each of the said parties to pay the separate costs in the same made by themselves.

235 The said decree was not made by the personal procurement, knowledge, or consent of said Scheurich or Guadalupe Bent, and the fact of the entry thereof was unknown to them for several years thereafter.

No other pleadings, orders, or proceedings in said cause, other than those above mentioned or recited, appear in the record thereof, and the record thereof does not show whether or not any inquiry was made by the court or by its authority touching the value of the said premises, or of the interest of the now plaintiffs therein, or as to the necessity of disposing of the same, or touching the other estate or means of the said infants, or the ability of the mother of said infants to maintain and educate the said infants, or touching the propriety, necessity, or advisability of such sale and conveyance of the interest of the now plaintiffs, nor does there appear of record any motion, petition, or showing against the propriety of the original decree vacated by the said decree of September, 1866.

The grant in question contains about one million seven hundred thousand acres, about two hundred thousand acres of which lie in the State of Colorado, and the balance in New Mexico, and contains some of the best and most valuable lands in the Territory; it con-

236 tains large areas of grazing and tillable land, and is traversed by several streams, furnishing water for irrigation, a small part of which was cultivated in May, 1866, and it contains, in addition, large bodies of timber, and in May, 1866, was known to contain considerable coal deposits, and was then believed and has since proven to have considerable deposits of precious metals, including gold and silver. At and about the year 1866 and for several years thereafter there was no demand for or sales of undivided interests in lands of the quantity, character, and location of those in question, such as to create any ascertainable market value thereof. Statements of the value of said land, in the opinion of the witnesses examined in the present suit, based upon a valuation per acre, are given in the testimony, varying from two and one-half cents to one dollar and twenty-five cents, and it is impossible from these statements to satisfactorily ascertain or fix what was the value per acre of said grant in or about 1866. It cannot be said from the testimony that there was a market for such grants at the time in the sense of a demand for them, their value being largely speculative for the future.

It is proven on the part of the complainants that the said Guadalupe Bent is a Mexican woman, and at the time of her said appointment as guardian *ad litem* to the infant complainants and at the time of the execution of her deed of May 3rd, 1866, was ignorant of the English language, unable to read, write, or speak the same; was unfamiliar with business or with her duties as guardian *ad litem*; was without knowledge of the boundaries or extent of said lands, or the character or value thereof, or of the act of Congress confirming the said grant, or of the particulars of the decree of June 3rd, 1865; that Maxwell represented to Sheurich that the grant was not as large as it was supposed to be; that it did not extend into Colorado or beyond the Red river, whereas it did so extend over 200,000 acres; that said Scheurich and Guadalupe Bent believed and were influenced by said representations; that the said Maxwell, while generous and magnanimous in many respects, was unscrupulous and tyrannical as well, and was a resolute and determined man, and was at that time a man of large wealth and great power and influence throughout the county of Taos and Territory of New Mexico, as was known to said Guadalupe Bent, and he exercised such power and influence in such way that the weak feared to oppose him in matters of personal concern; that said Guadalupe Bent was in part influenced in executing said conveyance by this known character of Maxwell; that Maxwell made threats that unless the Bent heirs accepted the sum of \$18,000 for their claims they would never get anything, and that no one should occupy any part of his land, and that such threats were communicated to said Guadalupe, and that this and Maxwell's known character influenced her in making the conveyance to Maxwell; that the said conveyance was written in the English language and was not read over to said Guadalupe or interpreted to her, but it appears to be the fact that means of knowledge of the extent, character, and value of the said grant was open to the Bent heirs

and to their counsel. It was not definitely known at the time where the boundary line between Colorado and New Mexico was. Guadalupe Bent acted in concert with the adult complainants in the suit, dealing with their own interests on the same terms as those she represented, and she was willing to make the same settlement they did. Both Scheurich and the counsel for the Bent heirs were conversant with both the English and Spanish language- and could read and write the same.

238 It appears by Guadalupe Bent's own testimony, and the court accordingly finds, that when she executed the conveyance to Maxwell she understood there had been a settlement with Maxwell by which the interests of the Bent heirs were to be transferred to Maxwell for the sum of \$18,000; that she understood the document she signed was a transfer of the interest in the Maxwell grant, which had belonged to her husband, Alfred Bent; that the settlement for \$18,000 was satisfactory to her; that she supposed the document she signed was one which Scheurich had arranged with Maxwell; that she had relied on said Schurich for advice, and was willing to accept and do whatever he thought best in the matter; that she believed she had authority to sign the deed and to convey the interest in said grant which her former husband, Alfred Bent, had claimed or owned, and it was her intention by the said deed to convey to Maxwell whatever interest in said grant had belonged to said Alfred Bent in his lifetime and was left by him at his decease, and the court finds that no fraud, imposition, or error has been shown to have entered into said transaction or to have brought about said compromise decree.

No money was received by Guadalupe Bent from Maxwell at the time of the execution of said conveyance. Maxwell, upon the execution of the deeds by her and the two sisters of Alfred Bent, gave to them his three promissory notes, payable in one year, amounting in all to \$18,000, divided into such sums as were desired by the said parties. Guadalupe Bent received one of these notes for something over \$5,000. As to the payment of this note the testimony is 239 conflicting. Guadalupe Thompson testifies that it was paid to her second husband, George W. Thompson, because her husband told her so, to whom she was married about thirteen months after the death of her husband, and to whom she delivered said note with everything else she had when she married him and whom she authorized to collect said note. George W. Thompson and other witnesses testify that only a portion of said note was paid. The note is not produced, but its absence is accounted for by the statement of Thompson that he sent it to Maxwell at his request to have a credit endorsed and that he never got it back. It does not appear that Maxwell refused to return it. The weight of the evidence is found to be that at the beginning of the Maxwell Company suit a considerable sum, but how much cannot be ascertained, remained unpaid on the note. It also appears that Maxwell was at all times after the making of the note a man of ample financial responsibility. It does not appear that any part of the proceeds of said note was paid to the children of Alfred Bent or their mother,

but George W. Thompson supported, maintained, and educated them during their minority after his marriage to their mother with the funds of his wife and himself the same as his own children, keeping no separate account.

Upon the execution and delivery of the deeds by Guadalupe Bent, guardian *ad litem*, and the adult complainants, May 3rd, 1866, Aloys Scheurich and his wife assumed for complainants in said original suit payment of the fees of their counsel therein and paid the same, the amount thereof being included in the note of Maxwell

240 given to Scheurich's wife and the *pro rata* amount thereof being deducted from the other two notes given to Guadalupe

Bent and Mrs. Hicklin in equal proportions. There is no evidence that such counsel or other counsel were afterwards retained by Scheurich or other of said complainants, and the record of the said decree of September, 1866, does not disclose what attorney appeared or assumed to appear for the complainants in said cause and consented to the making of said order.

The inventory of the property left by Alfred Bent and filed March 6th, 1867, by Guadalupe Bent, as administratrix, in the probate court shows that outside of the real estate and the note received from Maxwell the total assets of the estate were \$1,408. The debts mentioned in the will of Alfred Bent, together with additional claims against the estate admitted and allowed in the probate court, amounted to \$2,423. But witnesses familiar with said Bent's affairs testify that at the time of his death he had both real and personal property other than that inventoried, both in New Mexico and in Colorado.

And the court makes and certifies the foregoing statement and findings as the facts proven and established by the evidence in each of said causes, and orders that the same be incorporated in the record as part thereof.

THOMAS SMITH,

Chief Justice.

Filed October 15th, 1895. Geo. L. Wyllys, clerk. (Findings of fact.)

240½ And afterwards, to wit, on the 23rd day of November, 1895, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico an affidavit of value in said cause; which said affidavit was and is in the words and figures following, to wit:

240½ In the Supreme Court of New Mexico.

THE MAXWELL LAND GRANT & RAILWAY COMPANY }

vs.

GUADALUPE THOMPSON *et al.* }

I, Sol H. Jaffa, being first duly sworn, says on oath: I reside at Trinidad, in the county of Las Animas, in the State of Colorado. I am engaged in the business of merchandising. Trinidad is not

more than ten miles from the northern limit of what is known as the Maxwell land grant, situate partly in Colfax county and partly in Las Animas county, Colorado. I have resided in the same vicinity—some of the time in Colorado and some of the time in New Mexico—for more than twenty years last past. I know the Maxwell land grant before mentioned, the same an interest in which is claimed by the plaintiffs and appellants in this above-entitled cause, and have been acquainted with it for more than twenty years last past. I have been over a good part of the area of the ground, and I believe I am pretty well acquainted with what it contains. A large — of it is grazing land. It contains a great many thousand acres of very valuable timber. Gold mines have been discovered and have yielded large sums and are still being worked. Extensive mines of coal have been opened and are still being worked, and upon the immediate vicinity of the water-courses there is quite a considerable area of irrigable and tillable land. The whole ground is understood to contain, and I should think does contain, not far from two million acres of land. I think I know the boundaries of this grant, and I think this estimate as to the contents of it is not too great. I believe I am acquainted with the value of lands in Colfax county, New Mexico, and Las Animas county, Colorado, according to the current going market prices thereof, and I am confident that an undivided one-twelfth part of this grant is worth not less than three hundred & seventy-five thousand dollars. I am not a party to this litigation nor in any way interested therein.

SOL H. JAFFA.

240³ Subscribed and sworn to before the undersigned, a notary public in and for the county of Las Animas, at the said county of Las Animas, in the State of Colorado, this 18th day of November, A. D. 1895.

WILLIAM LITTLEFIELD,

[SEAL.]

Notary Public.

My commission expires May 19th, 1896.

241 And afterwards, to wit, on the 12th day of November, 1895, there was filed in the office of the clerk of said supreme court of the Territory of New Mexico an affidavit of the value of the property involved in said suit; which said affidavit is in the words and figures following, to wit:

In the Supreme Court of New Mexico.

THE MAXWELL LAND GRANT & RAILWAY COMPANY }

vs.

GUADALUPE THOMPSON *et als.* }

Albert W. Archibald, being first duly sworn, says on oath: I reside at Trinidad, in the county of Las Animas, in the State of Colorado, and have resided there and in that part of Colorado since about the year 1861. During a considerable part of that time I

have followed the business of land surveying. I believe I am well acquainted with what is known as the Maxwell land grant, lying partly in Las Animas county, Colorado, and partly in the county of Colfax, in the Territory of New Mexico, and have been acquainted with that tract since about the year 1858. I have frequently visited the grant and have traveled over a very considerable part of its area. I think I am acquainted with the character of the surface, its products and capabilities. A very large part of the ground is good grazing ground and has probably no other value. A considerable part of it—the most part of it along the streams—is cultivated and is valuable for cultivation. I cannot say with confidence the area of irrigable land within the grant, but I think it certainly is not less than fifty thousand acres. A very large part of the grant is covered with forests of pine and spruce timber, valuable for the manufacture of lumber, railway ties, and other like purposes. Near Elizabethtown valuable mines of gold and silver were discovered as long ago as 1867 and were worked for several years, yielding large values in gold and silver; they have not been extensively worked of late years, but it is not believed that they have been exhausted. Very extensive mines of coal are found upon the grant, and these coal mines have been worked for more than ten years last past, yielding large quantities of coal. I believe I know the boundaries of the grant and am sufficiently acquainted with it to fix its value. I am satisfied that an undivided twelfth part of this grant is at this time worth not less than three hundred and fifty thousand
 242 dollars. In the present times there is no active market for real property, and it is difficult to estimate the value of so extensive a tract as this, because purchasers of so extensive a tract are not often found, but I make this estimate as to what I think the ground ought to bring if a purchaser could be found willing to pay a reasonable price.

ALBERT W. ARCHIBALD.

Subscribed and sworn to before the undersigned, a notary public in and for the county of Las Animas, at the said county of Las Animas, in the State of Colorado, this ninth (9th) day of November, A. D. 1895.

E. BRIGHAM,
Notary Public.

[SEAL.]

My commission expires Aug. 28, 1898.

And be it further remembered that on the ninth day of October, 1895, there was filed in the office of the clerk of the supreme court of New Mexico the opinion of said court in said cause; which said opinion is hereto annexed in accordance with rule 8 of the Supreme Court of the United States, and is in the words and figures following, to wit:

243 In the Supreme Court, Territory of New Mexico.

THE MAXWELL LAND GRANT AND RAIL-
WAY COMPANY *et als.*

v.

GUADALUPE THOMPSON, Administratrix,
et als., Appellants.

} Error to Colfax County.

Opinion of the Court.

COLLIER, A. J.:

The history of events which preceded the filing of the bill in this case are minutely set forth in the opinion of Justice Bradley, in the case of Thompson v. Maxwell, reported in 95 U. S., 391, and the purpose of the filing of the bill upon which proceedings were had that were then before the Supreme Court of the United States on appeal. The bill then before that court, being a bill of review, was held not to be sustainable, as such a bill could not be used to reverse, modify, and reconstruct the decree of September, 1866. That court held, however, that "if instead of seeking to reverse the decree of September, 1866, the bill had sought to carry that decree more effectually into execution, it would have been free from legal objections and equally conducive to the object in view, the quieting of the title to the land in question." That court therefore reversed the decree on that bill, which had been in favor of the complainants in the lower courts, with directions to allow them to amend their bill as they should be advised and with liberty to the defendants to answer any new matter introduced therein, and that all the proofs in the case shall stand as proofs upon any future hearing, with liberty to either party to take additional proofs, &c. An amended bill was then filed, which by elimination

244 changed it from a bill of review to a bill to quiet in complainants the title to the property in controversy.

Upon the answer practically the same questions are raised as in the case of Charles Bent *et als.*, by their guardian *ad litem*, George Thompson, vs. The Maxwell L. G. & R'y Co., decided at this term, the evidence in each case being used in both, as per stipulation of counsel, who were the same in both causes.

A decision against the appellants, who were complainants in that cause, must logically conduce to an affirmance of the decree rendered in favor of the complainants in this cause; and it is so ordered. It is further ordered that this cause be remanded to the district court of Colfax county, with directions to carry said decree into effect.

N. C. COLLIER,
Associate Justice.

We concur:

N. B. LAUGHLIN,
Associate Justice.

H. B. HAMILTON,
Associate Justice.

GIDEON D. BANTZ,
Associate Justice.

245 TERRITORY OF NEW MEXICO, }
County of Santa Fé, Supreme Court. }

I, Geo. L. Wyllys, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the foregoing is a full, true, and perfect transcript of such portions of the record in said cause as said appellants deem necessary for review in the Supreme Court of the United States, as the same remain on file and of record in my office.

Witness my hand and the seal of said court, at Santa Fé, New Mexico, this 15th day of November, A. D. 1895.

[Seal Supreme Court, Territory of New Mexico.]

GEO. L. WYLLYS, *Clerk.*

246 In the Supreme Court of the Territory of New Mexico.

THE MAXWELL LAND GRANT & RAILWAY COMPANY *et als.*, Appellees, }
vs.
GAUDALUPE THOMPSON, Administratrix, &c., *et als.*, Appellants. }

Appeal from Colfax district court.

Be it further remembered that on the 9th day of November, A. D. 1895, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a certain bond in appeal herein, then and there duly approved by the Honorable N. B. Laughlin, one of the judges of the said supreme court, and which said bond, with the approval aforesaid thereunder written, was and is in words and figures as follows, to wit:

"Know all men by these presents that we, Guadalupe Thompson, as administratrix of the estate of Alfred Bent, deceased; George Thompson, husband of the said Guadalupe Thompson; Charles Bent, Julian Bent, and Alberto Silas Bent, as principals, and C. F. Remsberg and E. D. Wight, as sureties, are held and firmly bound unto the Maxwell Land Grant & Railway Company and Luz B. Maxwell in the full and just sum of five hundred dollars (\$500), to be paid to them, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals this ninth day of November, 1895.

246½ Whereas lately, at the July term, 1895, of the supreme court of the Territory of New Mexico, in a certain appeal then pending in said court between the said Guadalupe Thompson, administratrix as aforesaid; George Thompson, Charles Bent, Alberto Silas Bent, and Julian Bent, as appellants, and said Maxwell Land Grant & Railway Company and Luz B. Maxwell, as appellees, a certain final decree was rendered against the said appellants, and they, the said appellants, have prayed an appeal from the said decree to the Supreme Court of the United States:

Now, the condition of this obligation is such that if the said Guadalupe Thompson, administratrix as aforesaid; George W. Thompson, Charles Bent, Alberto Silas Bent, and Julian Bent shall prosecute their said appeal to effect and answer all costs if they fail to make good their plea, then the above obligation to be void; else in full force and virtue.

GEORGE THOMPSON.	[SEAL.]
GUADALUPE THOMPSON,	[SEAL.]
<i>Administratrix.</i>	
CHARLES BENT.	[SEAL.]
JULIANO BENT.	[SEAL.]
ALBERTO SILAS BENT.	[SEAL.]
C. F. REMSBERG.	[SEAL.]
E. D. WIGHT.	[SEAL.]

Signed, sealed, & delivered in presence of—

Witness as to signatures of Guadalupe Thompson, administratrix; Charles Bent, Julian Bent, and Alberto Silas Bent:
GEORGE W. THOMPSON.

Witness as to signatures of George Thompson, C. F. Remsberg, and E. D. Wight:
M. R. FORBES.

Approved:
N. B. LAUGHLIN,
Judge Supreme Court, New Mexico.

Approved:
[SEAL.] GEO. L. WYLLYS,
Clerk Supreme Court, Territory of N. Mex.

247 Be it further remembered that afterwards, to wit, on the 30th day of November, A. D. 1895, there *was* filed in the said supreme court certain assignments of error herein in the appeal of the said appellants to the Supreme Court of the United States, and the original of which said assignments of error *are* hereto attached:

248 TERRITORY OF NEW MEXICO:

In the Supreme Court.

I, George L. Wyllys, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the foregoing is a true, perfect, and correct transcript of the portions of the record of the cause therein mentioned which are therein set forth, to wit, the appeal bond, and that the paper hereunto attached is the original of the assignments of error in the appeal of the appellants in said cause to the Supreme Court of the United States, which were also filed in my office.

In witness whereof I have set my hand and seal of said court this 30th day of December, A. D. 1895.

[Seal Supreme Court, Territory of New Mexico.]

GEO. L. WYLLYS, *Clerk.*

249 *Appeal from the Supreme Court of the Territory of New Mexico.*

In the Supreme Court of the United States.

GUADALUPE THOMPSON, Administratrix of the Estate of Alfred Bent, Deceased; George Thompson, Her Husband; Charles Bent, Alberto Silas Bent, Julian Bent, Defendants and Appellants,

vs.

THE MAXWELL LAND GRANT & RAILWAY COMPANY, LUZ B. MAXWELL, Plaintiffs and Appellees.

And the said Guadalupe Thompson, administratrix; George Thompson, Charles Bent, Alberto Silas Bent, and Julian Bent, come now and say that in the record and proceedings of the supreme court of New Mexico and in the final decree of said supreme court manifest error hath intervened in this, to wit:

First. It appears by the record and proceedings aforesaid that the decree of the district court in and for the said county of Colfax was by the supreme court of the said Territory of New Mexico in all things affirmed, whereas the said decree given in the said district court in and for the said county of Colfax was erroneous and ought to have been reversed.

Second. Also in this, to wit, that the facts found and declared by the supreme court of the Territory of New Mexico are not sufficient to sustain the decree given in the supreme court of the Territory of

250 New Mexico nor the decree given in the district court of the county of Colfax aforesaid, but, on the contrary thereof, upon the facts found by the supreme court of the Territory of New Mexico, the decree given in the district court in and for the county of Colfax, in said Territory, in favor of the said appellees and against these appellants ought to have been reversed and declared for naught.

Third. That in and by the said record and proceedings it doth appear that by a certain final decree made and given in the district court in and for the county of Taos, in the Territory of New Mexico, on the 3rd day of June, 1865, Alfred Bent, ancestor of the now defendants, and appellants Charles Bent, Alberto Silas Bent, Julian Bent, was vested with one undivided twelfth part and share in the premises named in the bill of complaint of the said appellees, plaintiffs in the district court of the said county of Colfax, and the decree afterwards, at the September term, 1866, given in the said district court in and for the county of Taos, assuming to vacate, annul, and set aside the final decree so given on the 3rd day of June, 1865, was and is erroneous and void as against appellants, and decree ought to have been given in the district court in and for the said county

of Colfax dismissing the bill of complaint of the said appellees out of the said district court, whereas in and by the said record and proceedings it doth appear that final decree was given in the district court in and for the said county of Colfax in accordance with the prayer in the complaint of the appellees, plaintiffs in the district court of the said county of Colfax, and by the decree given in the said supreme court of the Territory of New Mexico the final decree so given in the said district court in and for the county of

251 Taos on the 3rd day of June, 1865, was declared to be interlocutory, and in and by the judgment, decree, and opinion of the supreme court of the Territory of New Mexico it was declared that the decree entered at the September term, 1866, of the district court in and for the said county of Taos, assuming to vacate, annul, and set aside the said former decree of that court on mere consent of parties, not showing or setting forth who assumed to represent or consent for the defendants and appellants herein in that behalf, and no evidence being heard touching the matter, was and is nevertheless effectual to vacate, annul, and set aside such former decree in favor of plaintiffs' ancestor, the said Alfred Bent.

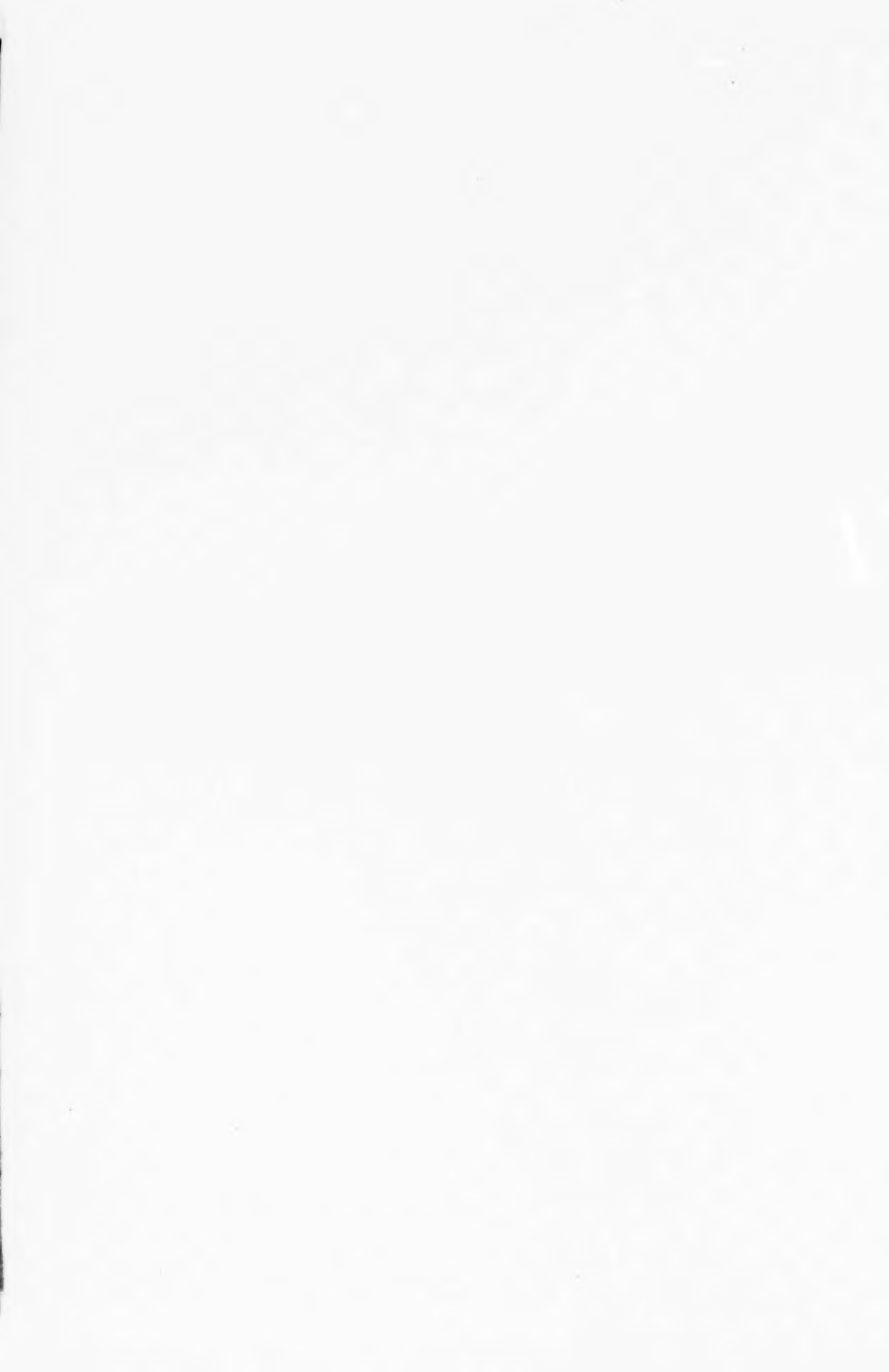
252 Wherefore, for the errors aforesaid and the manifold other error in the said record and proceedings and in the decree of the said supreme court of the Territory of New Mexico appearing, the said Guadalupe Thompson, administratrix of the estate of Alfred Bent, deceased; George Thompson, her husband; Charles Bent, Alberto Silas Bent, and Julian Bent pray that the decree of the supreme court of the Territory of New Mexico and the decree given herein in the district court in and for the county of Colfax may be reversed, annulled, and altogether held for naught, and that appellants be restored to all things which by virtue thereof they have lost, and they also pray that decree be given for their costs in this behalf expended.

CALDWELL YEAMAN,
E. T. WELLS,
R. T. McNEAL,
JOHN G. TAYLOR,

Solicitors for Appellants and of Counsel.

[Endorsed:] Filed in my office this Nov. 30, 1895. Geo. L. Wylls, clerk.

Endorsed on cover: Case No. 16,109. New Mexico Territory supreme court. Term No., 387. Guadalupe Thompson, administratrix of the estate of Alfred Bent, deceased; George Thompson, her husband; Charles Bent, Alberto Silas Bent, & Julian Bent, appellants, vs. The Maxwell Land Grant & Railway Company & Luz B. Maxwell. Filed December 9, 1895.



TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1898.

No. 322

91.

CHARLES BENT, JULIAN BENT, AND ALBERTO SILAS
BENT, APPELLANTS,

vs.

GUADALUPE MIRANDA, JESUS G. ABREU, AS SURVIV-
ING EXECUTOR OF THE LAST WILL OF CHARLES
BEAUBIEN; LUZ B. MAXWELL, ET AL.

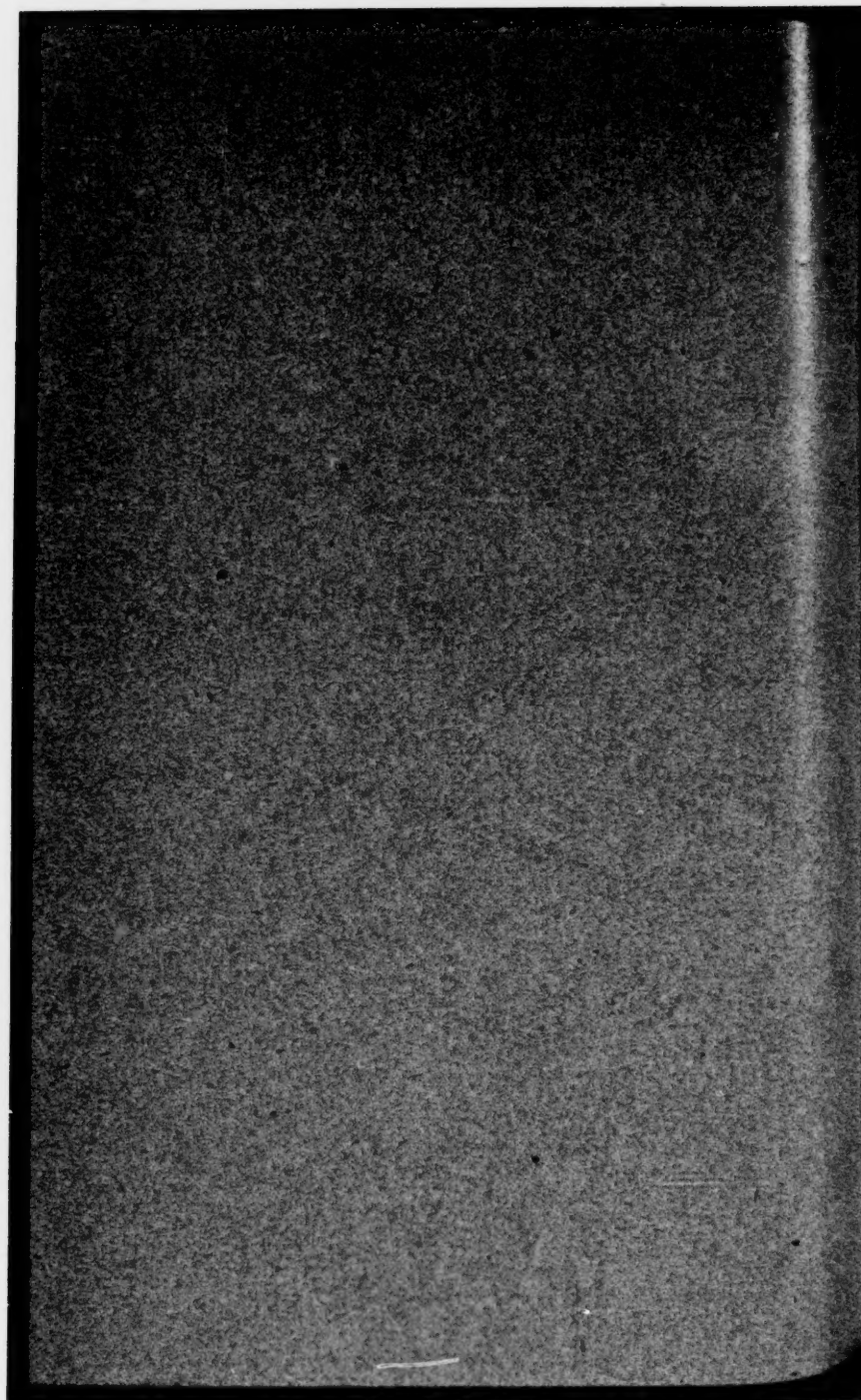
APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW
MEXICO.

FILED DECEMBER 9, 1898.

(16,110.)

470
15

58



(16,110.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM. 1896.

No. 388.

CHARLES BENT, JULIAN BENT, AND ALBERTO SILAS
BENT, APPELLANTS,

vs.

GUADALUPE MIRANDA; JESUS G. ABREU, AS SURVIV-
ING EXECUTOR OF THE LAST WILL OF CHARLES
BEAUBIEN; LUZ B. MAXWELL, ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF NEW
MEXICO.

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1 Be it remembered that heretofore, to wit, on the nineteenth day of July, 1894, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a certain transcript of record from the district court in and for the county of Colfax, in said Territory; which said transcript is in the words and figures following, to wit:

2 *Transcript of Record.*

Pleas before the Honorable L. Bradford Prince, chief justice of the supreme court of the Territory of New Mexico, and judge of the fourth judicial district court, at a term of said district court begun and held at chambers in and for the county of Colfax, on the 7th day of April, A. D. 1882, to wit:

CHARLES BENT <i>et al.</i>	}	Chancery. No. 430.
<i>vs.</i>		
THE MAXWELL LAND GRANT AND RAILWAY Co. <i>et al.</i>		

Be it remembered, that heretofore, to wit: on the 7th day of April, A. D. 1882, the said complainants filed in the clerk's office of the fourth judicial district for the Territory of New Mexico their bill of complaint, which said bill of complaint is in the words and figures as follows, to wit:

Bill of Complaint.

TERRITORY OF NEW MEXICO, }
County of Colfax. }

In the District Court of the First Judicial District, Sitting in the County of Colfax, in the Territory of New Mexico, for the Trial of Causes Arising under the Laws of the Territory, at the — Term Thereof, A. D. 1882.

To the Honorable L. Bradford Prince, chief justice of the supreme court of said Territory and judge of the first judicial district thereof, in chancery sitting:

Filed in my office this 7th day of April, 1882.

[SEAL.]

F. W. CLANCY,
Clerk and Register,
By H. S. CLANCY, Deputy.

\$5.00 paid by Geo. W. Thompson.

3 Humbly complaining, show unto your honor, your orators, Charles Bent, of lawful age, Juliano Bent, Alberto Silas Bent, infants under the age of twenty-one years, all of the county of Las Animas, and State of Colorado, by George W. Thompson, their next friend, that heretofore, and on or about the 11th day of January, 1—388

A. D. 1841, the Republic of Mexico, in due form of law, granted to Charles Beaubien and Guadalupe Miranda, citizens of the said republic, a tract of land, situate in the then province or department of New Mexico, and described in the said grant as follows, to wit: Commencing on the east of Red river, a mound was erected, from whence, following in a direct line in an easterly direction to the first hills, another mound was erected at the point thereof, and continuing from south to north on a line nearly parallel with Red river, a third mound was erected on the north side of the Chicorica, or Chacuaco mesa (table-land) thence turning towards the west, and following along the side of the said table-land of the Chacuaco to the summit of the mountain, where the fourth mound was erected; from thence, following along the summit of said main ridge from the north to the south to the Cuesta del Osha, one hundred varas north of the road from Fernandez to the Laguna Negra, where the fifth mound was erected; from thence, turning again to the east, towards Red river, and following along the southern side of the table-lands of the Rayado and those of the Gonzalitos, on the eastern point of which the sixth mound was erected; from thence, following in a northerly direction, to the west side of the Red river, opposite the first, where the last and seventh mound was erected;—all of which will more fully appear by reference to certain copies of the said grant and act of possession which your orators crave leave to file herewith, and make part hereof, and whereunto, for greater certainty, your orators crave leave to refer at the hearing. And your orators further show, that, afterwards, and on or about the 21st day

of June, A. D. 1860, by the act of Congress, entitled "An act
4 to confirm certain private land claims in the Territory of New Mexico," approved on the day and year last aforesaid, the said grant was confirmed.

Your orators further show that about the 12th day of September, A. D. 1859, Alfred Bent, Estefana Hicklin, Alexander Hicklin, her husband, and Teresina Bent, otherwise called Teresa T. Bent, instituted in the district court, in and for the county of Taos, in the Territory of New Mexico (in which said county the whole of said grant was then situate), their certain bill in equity, against the said Guadalupe Miranda and Charles Beaubien, and one Lucien B. Maxwell and one Joseph Pley, alleging that Charles Bent, father of said Alfred, Estefana and Teresina, was in his lifetime, by virtue of a certain parole agreement made between him, the said Charles Bent of the one part, and said Beaubien and Miranda of the other part, entitled in equity unto the equal, undivided one-third part of the said grant of lands; that said Charles Bent had departed this life intestate, and leaving said Alfred, Estefana and Teresina as his sole heirs-at-law; and in and by their said bill, the said Alfred, Estefana and Teresina prayed that they might be decreed entitled to said one-third part of said grant of land in fee-simple, and that partition thereof might be made; that pending said suit said Charles Beaubien departed this life, and Frederick Miller and Jesus G. Abreu, executors of his last will and testament, Luz B. Maxwell, wife of said Lucien B. Maxwell, Teodora Miller (otherwise called

Isadora Miller), wife of said Frederick Miller; Petra Abreu, wife of Jesus G. Abreu; Juana Clothier, wife of Joseph Clothier; Leonora Trujillo, wife of Vidal Trujillo, with their said respective husbands and Pablo Beaubien, then an infant, but who, about the year 1866, came of lawful age, and Frederick Miller, his guardian, were made parties defendant to said suit; that all said parties answered denying the equities claimed in said bill; that pending said suit said Teresina, also intermarried with Aloys Scheurick, and said Aloys
 5 was made party to said suit with said Teresina; that said cause came by legal continuances to the term of said district court, begun and held on or about the 29th day of May, A. D. 1865, and thereupon at said term of the court and on or about the 3rd day of June, A. D. 1865, a certain decree was made and entered of record, whereby, among other things therein contained and set forth, it was ordered, adjudged and decreed that the said Alfred, Estefana and Teresina were, and were thereby declared to be the heirs-at-law of the said Charles Bent, deceased, and as such heirs, fully and absolutely entitled to, and seized of the undivided one-fourth part of the said grant of lands, which your orators show was then commonly called the Rayado grant, and otherwise known as the Beaubien and Miranda grant, and since that time hath been commonly known as the Maxwell grant or estate, and which your orators show was then situate partly in the then county of Mora, in said Territory of New Mexico, and partly within the limits of the then Territory of Colorado, and now situate partly within the limits of the county of Colfax in said Territory of New Mexico, and partly in the State of Colorado.

And in and by the said decree the said undivided one-fourth part of the said grant of lands, was declared established and confirmed to them, the said Alfred, Estefana and Teresina, and to their heirs and assigns forever, with the full and perfect right, powers and authority to possess and enjoy the same, and it was decreed that a just and equitable partition of the said grant should be made between the said Alfred, Estefana and Teresina, and the aforesaid daughters and son of said Charles Beaubien, deceased, defendants therein, and said Lucien B. Maxwell (to whom, as declared in the said decree, the said Guadalupe Miranda had assigned, conveyed and set over, all his right, estate, part and share of and in the said grant,) and that the commissioners therein appointed to make the said partition,
 6 should lay off one-fourth of the said grant to the said Alfred, Estefana and Teresina, and one-half part of the remaining three-fourths to the said Lucien B. Maxwell, and one-half thereof to the said Leonora, Teodora, Luz, Juana, Petra and Pablo, sons and daughters of the said Charles Beaubien, and in and by the said decree Lucien Stewart, then of the said Taos county, Vicente Romero and William Kroenig, then of the said county of Mora, were appointed commissioners to make the said partition, and particular directions were in and by the said decree given in respect to the said partition; your orators crave leave at the hearing to refer to the original or some duly authenticated copy of the record of

said decree for greater certainty, and a copy thereof is hereto attached marked "A," and prayed to be taken as a part hereof.

Your orators further show on information and belief, that afterwards and about the year 1870, the said Leonora, Teodora, Juana, Petra and Pablo, all being then of full age, by their certain deeds of conveyance in due form of law granted, bargained, sold and conveyed to the said Lucien B. Maxwell all their estate, right, title and interest in or to the said premises, and about that same time, the said Guadalupe Miranda, in confirmation of the former assignment, transfer or conveyance of the said premises, in said decree recited, executed his certain deed of release, thereby conveying unto the said Lucien B. Maxwell all the right, title, property claim and demand, which he the said Guadalupe Miranda, had or might have in or to the said premises (to each of which said several conveyances, or to some authentic copy thereof, your orators, for greater certainty, crave leave to refer at the hearing), so that neither the said Leonora, Teodora, Juana, Petra, Pablo, Guadalupe nor either of them, have any estate, right, title or interest, in or to the said premises, nor any part thereof, nor any interest in this suit, or the subject-matter thereof, or the relief demanded.

Your orators further show that after the entry of the said decree of partition, and on or about the — day of December, 1865,
7 and before partition of the said premises had been effected, in pursuance of the said decree, the said Alfred Bent departed this life intestate, and leaving as his sole heirs-at-law your orators Julianio Bent and Alberto Silas Bent, then and still infants of tender years, and your orator, Charles Bent, then also an infant, but who since, to wit:—on or about the 26th day of April, A. D. 1881, hath come of lawful age. That on or about the 9th day of April, 1866, at a term of the district court, in and for the said county of Taos then sitting, the death of the said Alfred Bent was suggested of record, and your orators, as his children and heirs-at-law, were made parties complainants in that same cause, in his stead; and that afterwards, at that same term of the court, an order was made and entered of record in that same cause, wherein, after reciting an agreement of the parties thereunto, Guadalupe Bent was appointed guardian *ad litem* and commissioner in chancery for the minors of Alfred Bent, with full power to execute deeds, or carry into execution all sales or transfers made of her interests in and to the real estate therein described to Lucien B. Maxwell, one of the defendants in that cause, and said cause was continued to the next term of the said court.

That afterwards, at the September term, A. D. 1866, of the said district court, begun and held on or about the 10th day of September, 1866, at within and for the said county of Taos, a certain order or decree was made and entered of record in that same cause, wherein, after reciting the aforementioned decree, appointing commissioners to divide and set apart the one-fourth part of the said lands to the complainants in that said cause, and that said decree had never been carried into effect, and that, since the rendition thereof, a mutual agreement had been made between the parties to

that cause, settling and determining all equities in the same, it was ordered, adjudged and decreed, that the decree aforesaid, and all orders made under it, by virtue of the same, should be set aside;

and it was further ordered, adjudged and decreed, (by the mutual consent and agreement of the said parties, as appears by the recitation of the said decree,) that the said Lucien B.

Maxwell should pay to said complainants in that cause eighteen thousand dollars, as follows, to wit: To the said Aloys and Teresina, one-third part, and to the said Alexander and Estefana, another one-third part, and to your orators, the children and heirs of Alfred Bent, deceased, the remaining one-third part, to be equally divided among your orators, and to be paid into the hands of Guadalupe Bent, widow of the said Alfred Bent, and guardian *ad litem* of your orators, for the purposes of the said division.

And it was further ordered, adjudged and decreed, that the said Alexander, Estefana, Aloys and Teresina, and the said Guadalupe Bent, guardian *ad litem* to your orators, within ten days from that date should make, execute and deliver to the said Lucien B. Maxwell, good and sufficient deeds of conveyance of all their right, title, interest, estate, claim and demand, of, in and to the lands in controversy in that cause, the said Guadalupe Bent, in the names of your orators, and the others of said complainants in their own names; and that each of the said parties should pay the separate costs in that said suit, made by themselves.

All which orders and directions in the said last-mentioned decree, are thereby recited to have been made by the consent and agreement of the parties to the said suit.

And your orators further show that by the record of the said decree, it appears that although the said decree purports to be made by consent of parties, nevertheless it doth not appear by whom your orators were represented in that behalf, nor who assumed to consent to the said decree, in behalf of your orators. Also by the record of the said decree, it appears that no time whatever was limited to the said Maxwell for the payment of the said eighteen thousand dollars or any part thereof; and that no day was in the said decree allowed to your orators after coming to their majority to show cause against the said decree.

And your orators further show that said decrees and orders and each thereof have been duly enrolled in the said district court.

And your orators, for greater certainty, crave leave to refer at the hearing to the originals, or some duly authenticated copy of the record of each of the said orders and decrees.

Your orators further show on information and belief, that before the entry of the said last before-mentioned order and decree, and about the month of May, 1866, the said Aloys Sheurick and Teresina, his wife, and the said Alexander Hicklin and Estefana, his wife, by their deeds in due form of law, had conveyed to the said Lucien B. Maxwell all the interest of the said Estefana and Teresina, being the undivided two-twelfths in the said grant of lands, and that likewise before the entry of the said last-mentioned decree, and on or about the third day of May, 1866, the said Guadalupe

Bent had also executed her deed of conveyance, wherein after reciting that she had been appointed guardian *ad litem* and commissioner in chancery for your orators, minor heirs of the said Alfred Bent, deceased, by the order of the said district court, the said Guadalupe Bent by virtue of the power and authority in her conferred by the said decree, and in consideration of the sum of six thousand dollars, in her said conveyance recited, to have been paid to her by said Lucien B. Maxwell, assumed and pretended to grant, bargain and sell unto the said L. B. Maxwell the certain real estate known and described as the Rayado grant, theretofore granted to Charles Beaubien and Guadalupe Miranda by Governor Armijo on the 11th day of January, 1841, and bounded and described as follows, to wit: Beginning on the east bank of the Rio Colorado, at a mound of rocks, thence running in a straight line eastward to the first hills to another mound of rocks, thence continuing from south to north, on a parallel line with the

9 River Colorado, to the third mound of rocks, on the northern edge of the table-lands Chicorica or Chacuaco, thence running westward and following the edge of the table-lands of Chacuaco to the top or cone of the Sierra Madre to the fourth mound of rocks, thence from north to south, following the top of the said Sierra Madre to the Cuesta del Osha, one hundred varas to the north of the road to Fernandes and to Laguna Negra to the fifth mound of rocks, thence turning anew to the east toward the Rio Colorado, and following the southern edge of the table-lands of Rayado and Gonzalitos to the eastern point of these table-lands, to the sixth mound of rocks, and thence following in a northerly direction, until the said line strikes the Rio Colorado on the western bank of said river, where the seventh mound of rocks was placed; to have and to hold the undivided one-twelfth interest in and to the above-described real estate unto the said Lucien B. Maxwell and his heirs and assigns forever, the said one-twelfth undivided interest, estate, claim and demand, of the said Charles Bent, Julian Bent and Alberto Silas Bent, the said minor heirs of their father, the said Alfred Bent, deceased, of, in and to the real estate, as a child of, and one of the heirs of Charles Bent, senior, late of the Territory of New Mexico:—to which said several deeds and conveyances or to some duly authenticated copy or copies thereof, your orators, for greater certainty, crave leave to refer at the hearing.

And your orators further show to your honor that the said Guadalupe Bent, who your orators show is the mother of your orators, is a Mexican woman; and at the time of her said appointment as guardian *ad litem* to your orators, and at the time of the execution of her said pretended conveyance, and at the time of the entry of said last-recited decree was wholly ignorant of the English language, unable to read, write or speak the same, unfamiliar with business, or the proceedings of courts of law, unacquainted with the rights of your orators or her duties in that behalf, or the bounds or
 10 extent of the said grant, or the character or value thereof; and ignorant of the confirmation of the said grant by the act of Congress aforesaid; and ignorant of the decree of the said

district court directing partition of the said grant as hereinbefore set forth; or of what part or share in said grant was claimed by your orator's father in his lifetime.

And your orators show on information and belief, that in and about the management of her business, property and affairs, the said Guadalupe Bent was then and for a long time before that wont to consult with and rely upon the advice of the said Aloys Scheurick; that the said Scheurick was then residing near to the said Guadalupe Bent and was accustomed to profess great friendship and regard for her, and her children, and a desire to protect and assist her in the good management of the estate and property which had been left by the said Alfred Bent, and to protect the interests of her said minor children, and by reason of these professions of the said Aloys, and the connection in marriage which had subsisted between the said Aloys, and the father of your orators, the said Guadalupe Bent reposed special trust and confidence in the said Aloys Scheurick.

And your orators further show on information and belief that the said Lucien B. Maxwell was at that time and long before that a man of great wealth, and was possessed of great power and influence, throughout the said county of Taos and the said Territory of New Mexico, all which was at all the times aforesaid well known to said Guadalupe Bent and the said Lucien B. Maxwell, well knowing the weakness and ignorance of the said Guadalupe Bent, and her inexperience in matters of business and proceedings in courts, and her want of information as to the extent, character and value of the said grant, and her ignorance of the act of Congress aforesaid confirming said grant, caused and procured said Guadalupe Bent to be appointed

11 guardian *ad litem* for your orators; and procured the said pretended conveyance to be prepared for execution by the said Guadalupe Bent, and caused the same to be written in the English language, and caused and procured the said Aloys Scheurick to believe and to represent and said Scheurick by procurement of the said Maxwell or otherwise, did represent to the said Guadalupe Bent that the said grant of lands was for the most part, fit only for grazing, that the same contained little or no mineral, of value, and that the same extended only to the north line of the said Territory of New Mexico, as then constituted, that he, the said Maxwell was the owner of the major part of said grant, or was buying, or about to purchase the shares and interests of all other owners therein, and might, and would control the whole of said grant and exclude your orators from all share or part thereof; that the said Maxwell would pay to her, the said Guadalupe Bent, the sum of six thousand dollars for the interests of your orators in said grant, and that she, the said Guadalupe Bent, was duly authorized to sell and convey the said interests of your orators; and that unless she should accept the said sum of six thousand dollars, neither she nor your orators would ever realize anything for the interest of your orators in said grant.

And your orators further show, on information and belief, that confiding in the representations of the said Scheurick, so by pro-

curement of the said Maxwell or otherwise made to her, not knowing the contrary thereof, and moved and induced by the said representations, and by the great wealth, power and influence of said Lucien B. Maxwell, the said Guadalupe Bent executed the said pretended conveyance of your orators' interest in the said premises.

And your orators further show on information and belief, that neither at the time of the execution of the said conveyance, nor at any time before that, was the said pretended — read, or interpreted, or explained to her, that said pretended conveyance was executed without the advice of counsel, and at the time of the execution thereof, the said Guadalupe Bent was in entire ignorance of the character or extent of the said grant, or the value thereof, or of the rights and shares of your orators therein, and was believing and confiding in all and singular the representations aforesaid.

And your orators further show on information and belief, that neither then, nor at any time afterwards, nor after the entry of the decree lastly hereinbefore set forth at the September term, A. D. 1866, of the said district court; did the said Lucien B. Maxwell pay to the said Guadalupe Bent, nor to your orators, nor to any one for them, the said sum of six thousand dollars, though your orators have heard and believe that the said Lucien B. Maxwell, at some time after the entry of the last-mentioned decree, (and as your orators show, on information and belief, about the year eighteen hundred and sixty-eight,) paid or delivered to one George W. Thompson (with whom the said Guadalupe Bent had in the meantime, and about the year 1867, intermarried) some small sums of money, and sundry articles of personal property, much less in value than the said sum of six thousand dollars; all of which was by the said George W. converted to his own uses, and no part thereof was invested for or applied to the uses of your orators.

And your orators further show, on information and belief, that neither at the time of the entry of the said last-recited decree, at the September term, 1866, of the said district court, nor at any time before that, did the said Guadalupe Bent, nor the counsel or solicitor of the said Guadalupe Bent, nor any other person authorized to agree or consent for your orators in that behalf, in fact, agree or consent as in the said last-mentioned decree is falsely recited, or agree or consent to the entry of the said last-mentioned decree, nor to the vacation or setting aside of the former decree first hereinabove recited; and on information and belief your orators further aver that the said order and decree at the said September term, 1866, of the said district court, was procured to be entered in the absence of the said Guadalupe Bent, and without notice to her of any intention to apply therefor.

And your orators expressly charge that if the said Guadalupe Bent ever consented to the entry of the said decree at the September term, 1866, of the said district court, said consent was obtained by the importunity and fraudulent and false representations of the said Scheurick, without explanation to the said Guadalupe Bent, of the true meaning, purpose or effect of such decree; and the said Guada-

lupe Bent, in and about the giving of such consent, was entirely ignorant of the effect of the said decree, and ignorant of the former decree whereby the said Alfred, Teresina and Estefana, were invested with the one-fourth part of the said grant.

And your orators further show, on information and belief, that the said Lucien B. Maxwell, or the said Aloys Scheurick, or some other person or persons to your orators unknown, by procurement of the said Maxwell, caused it to be falsely represented to the said district court, that your orators or the said Guadalupe Bent in their behalf had agreed and consented to the setting aside of the said former decree, first herein recited, and to the entry of the said last-mentioned decree, as the same was entered of record at the September term, 1866, of the said district court, and solely by reason of such false representations, and the concealment hereinafter charged, the said district court, without any reference to the master, and without inquiry or judicial examination as to whether the said decree would be beneficial to your orators, gave and entered the said decree.

Your orators are advised by counsel, and therefore aver and charge the fact to be, that the consent and agreement of the said Guadalupe Bent, to the said last-mentioned decree, if such consent or agreement had in fact been voluntarily or intelligently given or made, would have been wholly ineffectual to bind your
14 orators; and that the said last-mentioned decree, so as aforesaid entered at the September term, 1866, of the said district court, and the before-mentioned conveyance of the said Guadalupe Bent to the said Lucien B. Maxwell were, and are, and each of them always was, and now is, wholly void, as against your orators.

Your orators further show that the before-described grant of lands contains two millions of acres or thereabouts, and abounds in valuable mines of gold and silver and valuable deposits of coal and other minerals and metals; that the said grant also contains a large extent, — acres, or thereabouts, of well-watered, irrigable lands, suitable for cultivation; also, extensive forests of pine and other timber trees; and that all the residue of the said lands are valuable for grazing; that the interest and share of your orators therein at the time of the entry of the said decree, at the September term, 1866, of the said district court, was reasonably worth the sum of one hundred thousand dollars and more, and hath ever since been appreciating in value; that the same, in fact, extends beyond the northern border of the Territory of New Mexico; that two hundred thousand acres, or thereabouts, of valuable land being within the limits of the State of Colorado, are, and always were, within the said grant, all of which, as your orators show, on information and belief, was at the time of procuring the said pretended conveyance from the said Guadalupe Bent, well known to the said Lucien B. Maxwell, and was unknown to the said Guadalupe Bent.

And your orators further show that your orators' ancestor, the said Alfred Bent, left a considerable estate in houses and lands, other than said grant, and in moneys and personal property, and the said Guadalupe Bent, your orators' mother, out of the said estate,

was then and always afterwards, well able to support and educate your orators, and neither at the time of the entry of the said decree at the September term, 1866, aforesaid of the said district court, was there any necessity for the sale of your orators' interest in the said lands.

And your orators further show, on information and belief, that all and singular the facts before set forth, touching the extent and value of the said grant, and the estate, real and personal, other than said grant, left by the said Alfred Bent, and the ability of the said Guadalupe, out of the said estate, to maintain and educate your orators, and all and singular the before-mentioned facts touching the execution by the said Guadalupe Bent of the said pretended conveyance to the said Lucien B. Maxwell, and the fraud and imposition practiced upon her in procuring the said conveyance were by procurement of the said Lucien B. Maxwell, concealed from the said district court at the time of the entry of the said last-recited decree at the September term, A. D. 1866, of the said district court.

And your orators are advised that the decree aforesaid so entered at the September term, A. D. 1866, of the said district court, directing conveyance by the said Guadalupe Bent, as guardian *ad litem* of your orators, to the said Lucien B. Maxwell, and vacating and setting aside the said former decree of said district court, is erroneous, in this, to wit: that it appears by the record thereof that the said district court entered the said decree upon the consent merely of parties, without setting forth who assumed to represent your orators, or consent thereto, in your orators' behalf.

Also in this, to wit:—that it appears by the record of the said decree, that although your orators were then infants of tender years, the said decree was made and given by the said district court by and upon consent of parties, merely, and without any reference to the master, or the examination of witnesses or judicial inquiry as to whether in fact such agreement of parties as therein recited had been made, or whether the said decree was or would be beneficial to your orators, or whether any necessity existed for the sale or disposition of your orators' interest in the said grant of lands.

Also in this, to wit:—that it appears by the record of the said decree that the said district court thereby directed that the said Guadalupe Bent should convey your orators' interest in the said lands, for a fixed sum, and to a certain person.

Also, in this, to wit:—that by the record of the said decree, it appears that hereby the said district court directed the conveyance of your orators' interest in the said lands to the said Lucien B. Maxwell by a day certain, and did not fix or limit any day for the payment, by the said Maxwell, of the said sum of six thousand dollars.

Also, in this, to wit:—that it appears by the record of the said decree, the said district court thereby assumed to and did assume to dispose of and convert into money, the freehold estate in lands of your orators, then being, as appears by said records, infants of tender years,—without any reason, cause or necessity existing or

shown to exist for such disposition, or any disposition whatsoever thereof, and without any direction or security for the investment or preservation of the said moneys.

Your orators further show that the decree so as aforesaid entered at the September term, A. D. 1866, of the district court of said Taos county, hath never hitherto been carried into execution; that no such conveyance as in the said decree directed, hath ever been made by the said Guadalupe Bent; nor hath the said Lucien B. Maxwell, nor any one for him, ever paid the moneys therein directed to be paid to the said Guadalupe Bent.

And your orators had well hoped that the said Lucien B. Maxwell, in his lifetime, and the Maxwell Land Grant and Railway Company, assignee of said Maxwell, as hereinafter mentioned, would have refrained and desisted from insisting upon the said last-mentioned decree, or pretending the same to be valid, or seeking to enforce execution thereof.

17 But now, so it is, may it please your honor, the said The Maxwell Land Grant and Railway Company, and the — Lucien B. Maxwell, and the said Luz B. Maxwell, about the year 1870, exhibited in the district court in and for the said county of Colfax, in the Territory of New Mexico, their certain bill of complaint against your orators, and the said Guadalupe Thompson as administratrix of the estate of the said Alfred Bent, George W. Thompson, her husband, and setting forth among other things, the said two decrees of the district court of the said county of Taos, and praying that the trust in the first-mentioned decree established and declared, might be adjudged, terminated and extinguished; that your orators, by George Boyles, their guardian *ad litem*, as also the other defendants, answered the said bill of complaint; that testimony was heard thereon, and a decree entered in the said district court, whereby among other things, it was decreed that the said premises, be, and were held by the Maxwell Land Grant and Railway Company free and discharged of any and all trusts, right, title and interest in or to the same, in favor of, or pertaining to the said Guadalupe Thompson, either in her own right, or as administratrix of the said Alfred Bent, deceased, the said George Thompson, her husband, the said Charles Bent, Alberto Silas Bent, Julianio Bent, or any or either of them, that upon appeal of all the said defendants to the supreme court of said Territory of New Mexico, the said last-mentioned decree was affirmed; and upon further appeal of all the said defendants to the Supreme Court of the United States, the said decree was reversed, and the said cause was remanded into the said supreme court of the Territory of New Mexico, and thence into the district court of the said county of Colfax, and in the said last-mentioned court, the said Maxwell Land Grant and Railway Company, hath amended its bill in divers particulars, but sets up, nevertheless, the decree so as aforesaid entered at the September term, A. D. 1866, of the district court of said Taos county, and relies thereon;

18 and prays, as in its said original bill, before amendment thereof.

All which your orators show is contrary to equity and good conscience.

Your orators further show that by reason of the decree, so as aforesaid, made and given at the September term, A. D. 1866, of the district court of Taos county, aforesaid, and the pretended conveyance by the said Guadalupe Bent of your orators' interest in said premises, your orators have been unable, hitherto, to have execution of the decree made, and given as first afore set forth, or to have partition of the said lands as in the said recited decree directed.

And your orators show on information and belief, that since the entry of the first-mentioned decree, some or all of the commissioners in the said decree mentioned, and therein appointed to make partition of the said lands, have departed this life, or have removed out of said Territory, or are unwilling to act therein; that on or about the — day of July, 1870, the said Lucien B. Maxwell, and the said Luz B. Maxwell, wife of the said Lucien B. Maxwell, by their deed, bearing date the 30th day of April, 1870, conveyed to the Maxwell Land Grant and Railway Company, a corporation organized under the laws of the said Territory of New Mexico, and having an office and place of business at said county of Colfax, all the said grant of lands, except the home ranch, of cultivated lands, in the said deed recited to contain about one thousand acres, and excepting also the following, to wit: the undivided one-half interest in the Montezuma mill, one-half the Montezuma quartz lode, the undivided one-sixth part of the Aztec lode, eight discoveries of quartz lodes, each fifteen hundred feet by one hundred feet, also excepting twelve lots in Elizabethtown, and six certain lots of land in the town of Cimarron City, but excepting from the reservation of the said home ranch, and thereby conveying to the said company the water power upon said home ranch, and the flouring mill erected thereon,

19 and the land whereupon the said mill was built, with so much of the land around and adjoining the said mill and water power, as might be necessary for the convenient, full and free use and enjoyment of the same, with the full and free right of way, in any direction, and at all times, forever, to and from the said water power and mill, over and across the said home ranch, but excepting also from the operation of said deed, such tracts of land as the said Lucien B. and Luz B. had theretofore sold and conveyed by deeds duly recorded on, or prior to the 25th day of January, 1870, and which said lands so by them previously conveyed, the said Lucien B. and Luz B. warranted not to exceed fifteen thousand acres.

And your orators further show on information and belief, that before the execution of the last-mentioned conveyance the said Lucien B. Maxwell and Luz B. Maxwell had conveyed to divers persons whose names and residences are unknown to your orators, certain large tracts of land, parcel of said grant, the particular descriptions and amounts whereof are unknown to your orators (some or all of which said parcels of land your orators show are now held by the grantees of said Lucien B. Maxwell and Luz B., his wife, or those

claiming under them, all and every of whom, when ascertained, your orators crave leave, if need be, to insert herein as parties defendant hereto, with the descriptions of their several possessions as claimed by them with proper and apt words to charge them in that behalf), which said last-mentioned lands, your orators, on information and belief, show are the same lands excepted out of the conveyance of said Lucien B. and Luz B., his wife, to the said Maxwell Land Grant and Railway Company, as by them previously conveyed by deeds recorded.

And your orators further show, on information and belief, that all the said lands, lodes, mining claims, mills and other premises whatsoever so excepted out of the conveyance of the said Lucien B.

and Luz B. to the said company, save those previously conveyed by them to other persons, were by the said Lucien B.

and Luz B. subsequently, but at what time in particular, your orators cannot state, released and conveyed to the said Maxwell Land Grant and Railway Company.

Your orators further show, on information and belief, that afterwards, and on or about the — day of —, A. D. 187—, the said Lucien B. Maxwell departed this life intestate, leaving him surviving the said Luz B. Maxwell, his widow, and as his heirs-at-law, Virginia, wife of one — Keyes, who resides, or is now abiding, in the State of Texas; Peter Maxwell, who resides at Fort Sumner, New Mexico; Amelia, wife of one — Abreu, residing at Fort Sumner aforesaid; Sophia, wife of Telesfor Jaramillo, of Bernalillo county, New Mexico; Pablito, aged sixteen years and Odila, aged ten years, both of whom your orators show reside with the said Luz B. Maxwell, at Fort Sumner aforesaid. That the said Joseph Pley also on or about the — day of —, A. D. 187—, departed this life intestate, leaving Bornigna, his widow, since intermarried with Vicente Mares, of Santa Fé, New Mexico; that the names of the heirs-at-law of said Joseph Pley, save the said Bornigna, are unknown to your orators. That said Leonora Trujillo, Fredrick Miller and Teodora Miller, his wife, also departed this life, but the dates of their respective deaths and the names and residence of their heirs respectively are to your orators unknown.

That said Alexander Hicklin hath also departed this life, and the said Estefana Hicklin is now sole and unmarried, and resides at the county of Pueblo, in the State of Colorado. Your orators further show on information and belief that the Maxwell Land Grant Company, a corporation organized under the laws of the Kingdom of the Netherlands and doing business in said county of Colfax, Cyrus W. McCormick and James M. Walker as purchasers, trustees or otherwise, also claim some right, title or interest in or to the said premises under said The Maxwell Land Grant and Railway Company, by some conveyance, mortgage, trust deed or demise with the particulars whereof your orators are not acquainted.

Your orators further show, on information and belief, that said The Maxwell Land Grant and Railway Company, shortly after receiving the conveyance aforesaid of the said Lucien B. Maxwell

and said Luz B. Maxwell, his wife, entered into possession of divers large tracts of land then being arable within the limits of the said grant, and began to and did cultivate and till the same; and they or the said The Maxwell Land Grant Company ever since have been wont to cultivate and till the said lands; and open divers mines of coal and other metals and minerals within the said grant, and have been wont to extract large quantities of ores, metals and minerals from the said mines, and from the cultivation of the said lands and the sale of the product thereof, and by the sale of the ores, metals and minerals mined and extracted from said mines, said The Maxwell Land Grant and Railway Company and the said The Maxwell Land Grant Company have derived great gains and profits over and above the reasonable cost of improving and tilling such lands, and over and above the reasonable cost of opening and working all such mines; and from the letting of divers other tracts of land within the said grant said companies have derived other large sums of money, one-twelfth part of all whereof as your orators are advised, is in equity payable to your orators.

In tender consideration whereof, and to the end that the said Guadalupe Miranda, who your orators show resides at Carresitos, Mexico, and the said Jesus G. Abreu, surviving executor of the last will and testament of the said Charles Beaubien, deceased, who your orators show resides at the county of Colfax, in the Territory of New Mexico, the said Luz B. Maxwell, who your orators show resides at Fort Sumner, in the Territory of New Mexico,

22 Petra Abreu and Jesus G. Abreu, her husband, who reside at the county of Colfax, said Territory, Juana Clothier, and Joseph Clothier, her husband, who reside at the county of Taos, said Territory, Pablo Beaubien, Virginia Keyes and — Keyes, her husband, Peter Maxwell, Amelia Abreu and — Abreu, her husband, Sophia Jaramillo, Pablito Maxwell, Odila Maxwell, Bernigna Mares, formerly — Pley, and Vicente Mares, her husband; the unknown heirs of said Joseph Pley, the said Estefana Hicklin, Teresina Scheurick and Aloys Scheurick, her husband, who reside at the county of Taos, New Mexico; and the said Guadalupe Thompson and said The Maxwell Land Grant and Railway Company, the unknown heirs of Leonora Trujillo, and of Frederick Miller and Teodora Miller, his wife, and the said The Maxwell Land Grant Company, Cyrus W. McCormick and James M. Walker, and the said other parties defendant when discovered, may, if they can show why your orators should not have the relief hereby prayed, and may severally true and perfect answer make to all and singular the matters hereinbefore set forth, but not on oath, their oaths and the oath of each of them to their respective answers being hereby expressly waived.

That the decree of the said district court, in and for the said county of Taos, made, given and entered of record, at the May term, A. D. 1865, of the said district court, establishing the right of your orators' ancestor, and said Estefana and Teresina in and to the equal undivided one-fourth part of the said grant of lands, and directing partition thereof may stand and be enforced and carried into execu-

tion in all things; that if need be, other commissioners be appointed to effectuate the said partition; that if need be, an inquiry be had in such manner as the court may direct, as to what lands, if any, have at any time been conveyed by the said Lucien B. Maxwell and Luz B. Maxwell, his wife, or either of them, to any person or persons now holding the same, other than the Maxwell Land Grant and Railway Company aforesaid, that the decree aforesaid, so made and entered at the September term, A. D. 1866, of the district court in and for the said county of Taos be reversed, annulled, and from henceforth held for naught, that the pretended conveyance of your orators' interest in and to the said grant of lands, so as aforesaid pretended to be executed by the said Guadalupe Bent, now Thompson, may be declared null and void, and delivered up to be cancelled; that an account may be taken by or under the direction of the court of the net gains and profits received by said The Maxwell Land Grant and Railway Company and the said The Maxwell Land Grant Company from the cultivation or letting of any of said lands, or the operation of any mines therein, over and above the reasonable cost of such cultivation of said lands, and the reasonable and proper cost of opening and operating said mines, and that one-twelfth part of said net gains and profits be decreed to be paid to your orators.

Or that your orators may have such further relief or such other and different relief as may seem to your honor according to equity and good conscience.

May it please your honor to grant to your orators the most gracious writ of subpoena issuing out of and under the seal of this honorable court directed to the said Guadalupe Miranda, and the said Jesus G. Abreu as surviving executor of the last will of said Charles Beaubien, and said Luz B. Maxwell, Petra Abreu and Jesus G. Abreu, her husband, Juana Clothier and Joseph Clothier, her husband; Pablo Beaubien, Virginia Keyes and — Keyes, her husband; Peter Maxwell, Amelia Abreu, and — Abreu, her husband; Sophia Jaramillo, Pablito Maxwell, Odila Maxwell, Bernigna Mares and Vicente Mares, her husband; the unknown heirs of Joseph Pley, deceased, Estefana Hicklin, Teresina Scheurick, Aloys Scheurick, her husband; Guadalupe Thompson, the Maxwell Land Grant and Railway Company, and said the unknown heirs of Leonora Trujillo and of Frederick Miller and Teodora Miller, his wife; and the said The Maxwell Land Grant Company, Cyrus W. McCormick and James M. Walker, commanding them on a day certain therein to be named and under a certain penalty, to be and appear in this honorable court, then and there to answer the premises, and stand to, abide and perform the order of the court.

And as in duty bound your orators will ever pray, &c.

CHARLES BENT.

CALDWELL YEAMAN &
E. L. SMITH, *Of Counsel.*

United States District Court, County of Taos, September Term,
1865.

ALFRED BENT, ESTEFANA HICKLIN and ALEX-
ander Hicklin, Her Husband; Teresina
Bent Alias Teresa T. Bent and Aloys Scheu-
rick, Her Husband, and also by Her Next
Friend, Ceran St. Vrain, Complainants,

vs.

GUADALUPE MIRANDA, JOSEPH PLEY, LUZ
Beaubien and Lucien B. Maxwell, Her
Husband, and the said Maxwell, Leonora
Beaubien, Petra Beaubien and Jesus G.
Abreu, Her Husband; Teodora Beaubien
and Frederick Miller, Her Husband;
Juana Beaubien and Joseph Clothier, Her
Husband, and Pablo Beaubien, Minor, and
the said Frederick Miller, His Guardian,
and Vidal Trujillo, the Husband of the
said Leonor Beaubien, Defendants.

Bill in Chancery for
Partition of Real
Estate.

And now on this day came the parties, by their counsel, and this
cause having been at a former term of this court heard upon the
bill and amended bill, and the answer thereto, the supplemental
bill and the answer, and the testimony herein on file as taken in the
cause; which cause was taken under advisement by the court as
to the decree which should be made in the premises, and the
court being fully advised. In consideration whereof, therefore, it
is ordered, adjudged and decreed by the court that the said
complainants, Alfred Bent, Estefana Hicklin and Teresina, other-
wise Teresa T. Bent, be, and hereby are, declared to be the
26 natural son and daughters of the said Charles Bent, in the
said bill mentioned, by him begotten upon and conceived
and born of Ygnacio Jaramillo, within the Territory of New Mexico,
formerly the department or province of New Mexico, and at the
time the said Alfred, Estefana and Teresa were begotten and con-
ceived, no lawful impediment existed to prevent the said Charles
Bent and Ygnacio Jaramillo from in due form of law solemnizing
a contract of marriage the one with the other; that as such natural
children, the said Alfred, Estefana and Teresa, in the absence of
any child or heir born in wedlock to the said Charles Bent, became
and were at the time of his decease, the true and lawful heirs of
his body in this Territory, with the full power, rights and au-
thority to inherit, succeed to, and receive the estate, property, rights
and interests of property of the said Charles Bent in the said
Territory, and that as such children and heirs they are justly
and lawfully entitled to have, maintain, recover, possess and enjoy
all the rights, interest and estate which in law or equity belonged

or pertained to the said Charles Bent at the time of his decease, of, in or to the lands, real estate or grant as described and set forth in the complainants' bill, and the exhibit therein referred to, which description is as follows, to wit: Commencing below the junction of the Rayado river with the Colorado; thence in a direct line to the east to the first hills, and from thence running parallel with said Colorado river to the north, to a point in front of the junction of the Uña de Gato with the said Colorado river, thence following said hills to the east of the said river of the Uña de Gato, to the summit of the mesa, thence turning to the northeast along said summit to the summit of the mountain that separates the waters that flow to the east from those that flow to the west, and from thence following the said mountain to the south to the first ceja, south of the Rayado river, and from thence following the summit of first ceja east to the place of beginning.

27 It is further ordered, adjudged and decreed that the said Charles Bent, at the time of his decease, was justly and equitably entitled and seized of one undivided fourth part of the estate in and to the said tract of land, real estate or grant, and that the said Charles Beaubien and Guadalupe Miranda were at said time so entitled and seized of an equal undivided share of the remaining three-fourths of the said tract or grant.

Furthermore, that the said Alfred, Estefana and Teresina (alias Teresa T.), upon the decease of their said father; inherited succeeded to, and became seized of the said undivided one-fourth part, interest and estate which belonged or pertained to the said Charles Bent, in law and equity, in and to the land or real estate, in the entire tract or grant aforesaid, at the time of his decease, and that the said Alfred, Estefana and Teresina are now fully and absolutely entitled to and seized of the undivided one-fourth part of the interest and estate of the said tract of land or grant.

Furthermore, that the said undivided one-fourth part in and to the said tract or grant of land, or real estate, be and hereby is, declared, established and confirmed to them, the said Alfred, Estefana and Teresina (alias Teresa T.) and to their heirs and assigns forever, with the full and perfect right, powers and authority to possess and enjoy the same.

It is further ordered, adjudged and decreed that a just and equitable partition be made of the said tract of land or grant between the said Alfred, Estefana and Teresina, and the said daughters and son of the said Charles Beaubien, deceased, defendants herein, and Lucien B. Maxwell, the assignee and grantee of the said Guadalupe Miranda, according to the rights, interests and estate hereinabove declared between the respective parties.

Furthermore, that the special commissioners hereinafter appointed to make and allot the said partition shall first take and subscribe an oath before the judge or clerk of this court, the clerk of the court of probate for the county of Mora, or the justice of the peace within and for the precinct including the county-seat of said county, to well and faithfully, without partiality, prejudice, favor, or ill will, to the best of their knowledge, understanding, skill and

abilities, make a partition and allotment of the said tract of land or grant, between the parties, and in the manner and form prescribed and required in this decree, and the said oath so taken and subscribed shall be duly certified by the officer administering the same, and by the commissioners annexed to and returned with the report by them to be made to this court. That when the oaths shall be so taken and subscribed, the said commissioners shall jointly proceed in person upon the said tract or grant, and without any unnecessary delay, and shall inspect the same throughout its extent, and especially the streams and springs of water and their capacities, one year with another, to supply water for the purpose of irrigating the lands connected with or contiguous to the said streams or springs, susceptible of cultivation and irrigation; the mines and minerals of whatsoever description; the quarries of rock or stones; timber for building, fencing and fire-woods; the lands suitable for plowing, planting and sowing, and grounds — and for pasturage.

They shall then make a partition of the said tract or grant, according to quantities, quality and value, and designate and describe the tracts or partitions divided by such descriptions, and natural and artificial objects or marks or boundaries, as shall remain plain and permanent and easily found. They shall part and lay off one-fourth part of the said tract or grant and divide, part and lay off the remaining three-fourths of the same into two equal parts. In making the said partition of the one-fourth and of the said three-fourths, regard shall be had to the buildings, acequias, cultivation and improvements made by the said Lucien B. Maxwell upon the said tract or grant of land, and nothing shall be credited to

29 the other parties, or charged and considered against the said Maxwell for any buildings, acequias, cultivation or improvements made and added to the said tract or grant of land by him, or by persons holding and possessing by or through him in good faith. This shall have special reference to the commencement of this suit upon the twelfth day of September, one thousand eight hundred and fifty-nine, and to the principal places and portions then occupied and improved by him and those by or under him. That in making and allotting the parts herein decreed, ordered and adjudged to be partitioned, the portions which shall be partitioned and allotted to the said Maxwell shall include the portions of said tract or grant which the said Maxwell, or those under or through him occupied and had cultivated and improved before the commencement of this suit, and since continued to occupy and improve, and the chief and principal portions the said Maxwell has occupied and improved since the commencement of this suit.

In case the said Maxwell, since the commencement of this suit, has by himself or others in parts of said tract or grant remote from the principal farms and improvements actually occupied by him, made slight or temporary cultivations or improvements which shall include the lands and waters in such manner as to leave not an equitable and just portion of the waters and cultivated lands to be parted to the other parties in this cause, then and in such case the said remote lands and waters included in such improvements or

slight cultivations shall in the partition to be made in this cause, be considered and included in the said partition, the same as if the said improvements were not made upon the said lands. In such case the commissioners shall assess the just and true value of the lands covered by such improvements without their being added to the said lands, and also the said improvements by themselves, exceeding the just and true value of them over and
30 connected with the said lands, and report the facts with their general report to this court, carefully noting the different assessed values, so that the court may decree justly and equitably concerning the same between the parties.

Furthermore, when the commissioners shall have parted the tract or grant of land as herein provided, they shall allot the one-fourth part to the said Alfred, Estefana and Teresina, (alias Teresa T.) Bent; and an equal portion of the said three-fourths, the one to the said Lucien B. Maxwell, and the other to the said son and daughters of the said Charles Beaubien, deceased.

In estimating the value of any improvements referred to herein, as made in certain remote places, and under the circumstances specified, the commissioners will also assess and report the value of the rents and profits since such places have been occupied and cultivated.

In parting and allotting to the said Maxwell the portion to be allotted to him, the said commissioners are hereby specially charged to estimate in the partition the lands which include the buildings, acequias, farms and other improvements by him made, or by others through or under him, in good faith, without reference to the value of any of the said improvements, but this provision does not extend to the aforesaid remote places, and the improvements hereinabove specially specified as connected therewith.

It is further ordered, adjudged and decreed, that Lucien Stewart, of Taos county, and Vicente Romero and William Kroenig, of the county of Mora, in said Territory, be, and they hereby are, appointed to execute and perform all the requirements and provisions of this decree, required of, and to be done by commissioners, and that they make full, plain and exact report of their proceedings to the next term of this court.

Furthermore, it is ordered, adjudged and decreed, that the
31 said complainants pay to the said defendants, Maxwell, and the said daughters and son of the deceased Charles Beaubien, the sum of one hundred dollars, the one-fourth part of the amount expended towards the procuring of the confirmation of the said tract or grant of land by the Government of the United States.

The court now reserves and suspends making its decree as to the partition and payment of the costs in this cause until a future term of this court.

It appearing to the satisfaction of this court, upon the suggestion of the complainants that, since the last term of this court, Leonor Beaubien has been regularly and lawfully divorced from the bonds of matrimony before existing between her and the said Vidal Tru-

jillo, it is ordered by the court that he be, and hereby is, dismissed from these proceedings and that the clerk furnish a copy of this decree to the said Maxwell and also to the commissioners, and one for the said son and daughters, should these latter require the same, and that this cause stand continued until the next term of this court.

Signed, June 3, 1865.

KIRBY BENEDICT,
Chief Justice.

32 And afterwards, to wit: on the 27th day of March, 1883, there was filed in said clerk's office, the following demurrer; which said demurrer is in words and figures as follows, to wit:

No. 435.

TERRITORY OF NEW MEXICO, }
County of Colfax. }

In the District Court of the First Judicial District of the Territory of New Mexico, Sitting in and for the County of Colfax. In Chancery.

CHARLES BENT *et al.*

vs.

THE MAXWELL LAND GRANT AND RAILWAY CO. *et al.* }

The joint and several demurrer of The Maxwell Land Grant and Railway Company, The Maxwell Land Grant Company, Cyrus W. McCormick, Guadalupe Miranda, Luz B. Maxwell, Petra Abreu and Jesus G. Abreu, Juana Clouthier and Joseph Clouthier, Pablo Beaubien, Virginia Keyes, Peter Maxwell, Sophia Jaramillo, Pablito Maxwell, Odila Maxwell, Teresina Scheurick and Aloys Scheurick, and Estefana Hicklin, certain of the defendants, to the bill of complaint of Charles Bent and Juliano Bent and Alberto Silas Bent, the last two being infants, by George W. Thompson, their next friend.

33 These defendants, by protestation, not confessing any of the matter, in and by said bill complained of, to be true in manner and form, as the same are set forth, severally say that they are advised that there is no matter or thing in said bill good and sufficient in law to call these defendants to account in this honorable court for the same; but that there is good cause of demurrer thereto, and they do demur accordingly; and for causes of demurrer say, that said bill, in case the same were true, contains no matter of equity whereon this court can ground any decree, or give complainants any relief as against these defendants.

And for further and special causes of demurrer they say:

First.

That it appears from the said bill of complaint, that all the matters and things set forth in the said bill and the issues involved

therein, are involved in another cause, now pending in this court, wherein all the necessary parties to the said bill are parties.

Second.

That the said bill is brought to reverse and annul a decree made and entered by consent, as appears upon the face of the decree itself, without making any sufficient showing that said consent was not given.

Third.

That said bill is in fact a bill of review, brought to reverse and annul a decree rendered by consent, and does not set forth facts sufficient to entitle complainants to the relief prayed for.

Fourth.

That the said bill in effect seeks to re-establish a decree that has been set aside and annulled by the court which rendered it, without any showing that the decree sought to be re-established was a proper decree, or well founded either in law or in fact.

Fifth.

34 That the said bill appears to be brought on behalf of Juliano Bent and Alberto Silas Bent, infants, by one George W. Thompson, as their next friend, without any leave of court being given to the said Thompson to file the same in behalf of said infants, and without said Thompson being lawfully appointed as next friend of said infants.

Sixth.

Said bill does not show that the complainants are entitled to have the said decree that was set aside reinstated or enforced or that said decree was a lawful or proper decree under the circumstances and evidence and pleadings of that cause.

Seventh.

Said bill does not show sufficient facts to entitle the complainants to have the decree entered by consent set aside, or to have the one that had been set aside by the court reinstated and enforced.

Eighth.

Said bill is uncertain, vague, deficient, imperfect, indefinite in its allegation, and does not allege sufficient state of facts to entitle the complainants to the relief prayed for.

FRANK SPRINGER,
T. B. CATRON,
Solicitors for Defendants.

TERRITORY OF NEW MEXICO, }
County of San Miguel. }

I, Thomas B. Catron, one of the solicitors for the defendants in the above-entitled cause, do hereby certify that in my opinion the

foregoing demurrer is well founded in point of law, and being duly sworn, on my oath say that said demurrer is not interposed for delay.

T. B. CATRON,
One of Counsel for Defendants.

Subscribed and sworn to before me, this 24th day of March, 1880.
[SEAL.] J. D. W. VEEDER,
Notary Public.

35 And afterwards, to wit: on the 27th day of November, 1883, there was filed and entered of record in said clerk's office the following order of court, which said order is in words and figures as follows, to wit:

CHARLES BENT *et al.*

vs.

THE MAXWELL LAND GRANT AND RAILWAY CO. *et al.* }

The demurrer of the respondents to the bill of complaint of the complainants herein having been heard on a former day, and the same having been argued by counsel for the respective parties and submitted to the court, and the court being now sufficiently advised in the premises, it is considered, ordered and adjudged that said demurrer be sustained, and that said bill be dismissed at the costs of complainant, taxed at —.

S. B. AXTELL,
Chief Justice, etc.

And afterwards, to wit: on the 10th day of September, 1884, there was filed in said clerk's office the following mandate from the supreme court of the Territory of New Mexico, which mandate is in words and figures as follows, to wit:

No. 435.

In District Court, Colfax County.

CHAS. BENT *et al.*

vs.

GUADALUPE MIRANDA *et al.* }

Mandate from Supreme Court.

The Territory of New Mexico to Samuel B. Axtell, chief justice of the supreme court of the Territory of New Mexico and judge of the first judicial district court thereof, sitting in and for the county of Colfax, Greeting:

36 Whereas in a certain suit in chancery lately pending before you wherein Charles Bent *et al.* were complainants and The Maxwell Land Grant and Railway Company *et al.* were defendants, on the 27th day of November, 1883, by your consideration in that behalf, the demurrer of the said defendants to the bill of complaint of the said complainants was sustained and the said bill dismissed at

the cost of complainants; and whereas afterwards the said cause was brought into our supreme court by writ of error by the said complainants, whereupon such proceedings were had in our said supreme court, that at the January, 1884, term thereof, it was considered that the judgment and decree aforesaid, by you in form aforesaid given be reversed and that said cause be remanded to your court with directions to render decision and decree therein overruling said demurrer, and to thereafter proceed according to law and the practice of the court.

Therefore you are hereby commanded that without delay you reinstate said cause upon your docket and further proceed therein according to law.

Witness the Honorable Samuel B. Axtell, chief justice of the supreme court of the Territory of New Mexico, and the seal of said court this 10th day of September, A. D. 1884.

C. M. PHILLIPS, *Clerk.*

37 And afterwards, to wit, on the 16th day of September, 1884, there was filed and entered of record in said clerk's office, the following decree of court, which decree is in words and figures, as follows, to wit:

38 *Decree.*

No. 435.

TERRITORY OF NEW MEXICO, {
County of Colfax. }

District Court.

CHARLES BENT *et al.* }
vs. } In Chancery.
GUADALUPE MIRANDA *et al.* }

Now on this day comes the parties hereto, the complainants by their solicitors, Messrs. Wells, Smith & Macon and Caldwell Yeaman, Esq., and the respondents by their solicitors, Messrs. Frank Springer and T. B. Catron. And on filing and reading the mandate of the supreme court of the Territory of New Mexico, by which this cause, heretofore taken by writ of error from this court to the said supreme court, is remanded to this court with directions to reinstate the same upon the docket of this court, and that a decree be rendered herein overruling the demurrer to the bill of complaint, and that the proceedings thereafter be according to law and the practice of this court.

And the court being now sufficiently advised in the premises, it is considered, ordered and decreed that the said judgment of the said supreme court of the Territory of New Mexico, be, and the same is, hereby made the judgment and decree of this court. That this cause be now reinstated upon the docket of this court, and that the demurrer heretofore filed by respondents to the bill of the complainants herein, be, and the same is hereby overruled, with costs.

It is further considered and ordered that respondents have thirty days from this date in which to answer said bill and that said complainants have thirty days, from and after the expiration of the thirty days allowed respondents, in which to file exceptions or a reply to said answer.

S. B. AXTELL,
Judge First Dist.

39 And afterwards, to wit: on the 24th day of October A. D. 1884, there was filed in said clerk's office the answer of the Maxwell Land Grant Company, which said answer is in words and figures as follows, to wit:

Answer of the Maxwell Land Grant Co.

No. 435.

TERRITORY OF NEW MEXICO, {
County of Colfax. }

In the District Court for the First Judicial District, Sitting within and for the County of Colfax.

CHARLES BENT, JULIANO BENT, and ALBERTO SILAS	} In Chancery.
BENT	
vs.	
THE MAXWELL LAND GRANT AND RAILWAY COMPANY and Others.	

40 The answer of the Maxwell Land Grant Company to the bill of complaint of Charles Bent, Julianio Bent, and Alberto Silas Bent, complainants.

This defendant, saving and reserving all manner of benefit and advantage to itself of exception to the many errors and insufficiencies in the said bill of complaint contained, for answer thereto, or to such parts thereof as this defendant is advised is material for it to make answer unto, answers and says:

This defendant admits the grant of lands by the Republic of Mexico to the said Charles Beaubien and Guadalupe Miranda and the confirmation thereof by Congress as stated in said bill.

This defendant admits that about the 12th day of September, 1859, Alfred Bent, Estefana Hicklin and Teresina Beet exhibited their bill in equity against the said Beaubien and Miranda and others, alleging and praying, as in the bill stated; that the several persons were made parties thereto, as stated, and that a decree was made and entered of record in said suit on or about the third day of June 1865, the purport and tenor whereof was as in said bill stated, but this defendant denies that the said Alfred, Estefana and Teresina were, or by the said decree were adjudged to be, the heirs-at-law of the said Charles Bent, or as such heirs fully and absolutely entitled to or seized of the undivided one-fourth part of the said

grant of lands, or that the said undivided one-fourth part of the said grant of lands was established or confirmed to them the said Alfred, Estefana and Teresina and to their heirs and assigns forever; but this defendant avers, to the contrary thereof, that the said decree was an interlocutory decree merely, and not final; that no legal estate or title was thereby determined, established or confirmed; that the said decree was never perfected, completed or made final so that the same could be appealed from and reviewed by an appellate court; that the said decree was wholly unwarranted by the pleadings and proofs in said cause and should have been
 41 reversed, if the defendants thereof had had an opportunity to appeal therefrom; that the agreement upon which the bill therein was founded, was, as appears from the said bill itself, void, without consideration, and against public policy; that the fact of such agreement or any agreement upon which said decree could have been founded was denied, in the sworn answers of the said Beaubien and Miranda, who were by said bill required to answer the same upon oath; that no evidence whatever was offered, proving the fact of said alleged agreement, all of which matters appear by the pleadings and proofs in said cause and this defendant craves leave at the hearing, to refer to the original or some duly authenticated copy thereof.

This defendant admits the conveyances by the said Miranda and the heirs of the said Charles Beaubien and said Lucien B. Maxwell as stated in said bill.

This defendant admits that the said Alfred Bent departed this life at about the date in said bill stated, but denies that he departed this life intestate, or that he left, as his sole heirs-at-law the said complainants, Julianio Bent, Alberto Silas Bent and Charles Bent, or any or either of them. It admits that the said complainants were made parties complainants in said cause, as in the bill stated, and that an order was made at the April, 1866, term of said court, whereby the said Guadalupe Bent was appointed guardian *ad litem* and commissioner in chancery for the minors of Alfred Bent, but denies that the same was with full power to carry into execution all sales or transfers made of her interests in and to the real estate therein described, as in said bill stated.

This defendant further admits that at the September term 1866, of the said district court begun and held on or about the 10th day of September, 1866, at, within and for the county of Taos, a certain decree was made and entered of record, wherein after reciting the aforementioned decree appointing commissioners to divide and set
 42 apart the one-fourth part of the said lands to the complainants in that said cause, and that said decree had never been carried into effect, and that since the rendition thereof, a mutual agreement had been made between the parties to that cause, settling and determining all the equities in the same, it was ordered, adjudged and decreed, that the decree aforesaid, and all orders made under it by virtue of the same, should be set aside, and in which it was further recited, ordered, adjudged and decreed as in the bill stated.

This defendant admits that by the record of said last-mentioned decree it doth not appear by whom the said complainants were represented in that behalf, and that it does appear that no time was limited to the said Maxwell for the payment of the said eighteen thousand dollars, and that no day was in the said decree allowed to said complainants after coming to their majority to show cause against said decree, but it avers that the said complainants were represented in that behalf by one Merrill Ashurst, an attorney of the said court and by other counsel; that the said sum of eighteen thousand dollars had prior to the making and entering of said decree, already been duly paid by the said Maxwell to the complainants in said suit, and that the court was not required as this defendant is advised to allow to the said complainants such day in court.

This defendant admits that about the month of May 1866, the said Aloys Sheurick and Teresina, his wife, and the said Alexander Hicklin and Estefana, his wife, conveyed the interests of said Teresina and Estefana to the said Maxwell, as stated, and that on or about the 3d day of May, 1866, the said Guadalupe Bent also executed her deed of conveyance, in substance as in said bill stated and avers that by the said deed of conveyance the said Guadalupe Bent did grant, bargain, sell and convey unto the said Lucien B. Maxwell the certain real estate in said bill described, being the undivided one-twelfth part of the grant of lands aforesaid, as in and by the said deed will more fully appear.

43 This defendant denies that the said Guadalupe Bent is a Mexican woman, and denies that at the time of the execution of her said deed she was unfamiliar with business, or the proceedings of courts of law or unacquainted with the rights of complainants or her duties in that behalf, or the bounds or extent of the said grant, or the character or value thereof, or was ignorant of the confirmation of the said grant by the act of Congress aforesaid; or was ignorant of the decree of said district court, directing partition of the said grant; or of what part or share in said grant was claimed by complainants' father in his lifetime.

This defendant is informed and believes and therefore admits, that the said Guadalupe Bent was wont to consult with and rely upon the advice of the said Aloys Sheurick, and that she reposed special trust and confidence in the said Sheurick, as stated in said bill.

The defendant denies that the said Lucien B. Maxwell was at that time and long before that, a man of great wealth, or was possessed of great power and influence throughout the said county of Taos, and Territory of New Mexico, or that the said Maxwell knowing the weakness and ignorance of the said Guadalupe Bent, or her inexperience in matters of business and proceedings in courts, or her want of information as to the extent, character or value of said grant, or her ignorance of the act of Congress confirming said grant, caused or procured said Guadalupe Bent to be appointed guardian *ad litem* for said complainants, or procured the said conveyance to be prepared for execution by the said Guadalupe Bent, or caused

the same to be written in the English language, or caused or procured the said Aloys Sheurick to believe or represent, or that the said Sheurick by procurement of the said Maxwell or otherwise, did represent to the said Guadalupe Bent, that the said grant of lands was for the most part fit only for grazing; that the same contained little or no mineral of value, or that the same extended only to the north line of said Territory of New Mexico, as then constituted; or that he, the said Maxwell, was the owner of the major part of said grant, or was buying or about to purchase the shares and interests of all other owners therein, and might or would control the whole of said grant and exclude said complainants from all share and part thereof; or that unless she should accept the sum of six thousand dollars, neither she nor said complainants would ever realize anything for the interest of complainants in said grant. It admits that the said Sheurick did represent to said Guadalupe Bent, that the said Maxwell would pay to her six thousand dollars for the interests she represented, and that she was duly authorized to sell and convey the same.

And this defendant avers that prior to about the year A. D. 1862, the said grant was wholly included within the Territory of New Mexico, as then constituted, and that at the time when said decree of September, 1866, was made, the boundary line between the Territory of New Mexico and Colorado had not been surveyed, and its exact location was not known, but it was generally supposed in New Mexico, that the latter Territory extended so far north as the town of Trinidad.

This defendant denies that the said Guadalupe Bent executed the said conveyance, confiding in the representations of said Scheurick, so as in the said bill alleged to have been made to her, or moved or induced by said representations, or by the great wealth, power and influence of the said Lucien B. Maxwell.

This defendant denies that neither at the time of the execution of the said conveyance, nor at any time before that, was the said conveyance read, interpreted or explained to her, or that the same was executed without the advice of counsel, or that at the time of execution thereof, the said Guadalupe Bent was in entire ignorance of the character or extent of the said grant, or the value thereof, or of the rights and shares of complainants therein, or was believing or confiding in all and singular the representations in said bill alleged.

This defendant denies that neither then nor at any time afterwards did the said Lucien B. Maxwell, pay to the said Guadalupe Bent, nor to any one for her, the said sum of six thousand dollars, but avers that the said sum of six thousand dollars was, prior to the said September term, A. D. 1866, of the said district court, to wit: on or about the 3rd day of May, 1866, duly paid by the said Lucien B. Maxwell to the said Guadalupe Bent.

This defendant denies that neither at the time of the said last-recited decree, at the September term, 1866, of the said district court, nor at any time before that, did the said Guadalupe Bent, nor the counsel or solicitor of the said Guadalupe Bent, nor any other per-

son authorized to agree or consent for said complainants in that behalf, in fact, agree or consent as in said last-mentioned decree is recited, or agree or consent to the entry of the said last-mentioned decree, nor to the vacation or setting aside of the former decree first in said bill above recited, or that the said order and decree was procured to be entered in the absence of the said Guadalupe Bent, or without notice to her of any intention to apply therefor. It denies that such consent was obtained, by the importunity and fraudulent or false representations of the said Scheurick, or without explanation to the said Guadalupe Bent of the true meaning, purpose or effect of such decree, and avers that if such consent was so as aforesaid obtained it was without the procurement of the said Lucien B. Maxwell. And it denies that in and about the giving of such consent, the said Guadalupe Bent was ignorant of the effect of the said decree, or ignorant of the former decree purporting to invest the said Alfred, Teresina and Estefana with the one-fourth part of said grant.

This defendant denies that the said Lucien B. Maxwell, or the said Aloys Scheurick, or any other person or persons by procurement of the said Maxwell, caused it to be falsely represented
46 to the said district court, that the said complainants or the said Guadalupe Bent in their behalf, had agreed and consented to the setting aside of said former decree, in said bill first recited, and to the entry of the said last-mentioned decree, or that by reason of such alleged false representations, or the concealments in said bill charged, or without reference to the master, or without inquiry or judicial examination as to whether the said decree would be beneficial to said complainants, the said district court gave and entered the said decree.

This defendant, upon advice of counsel, denies that the consent or agreement of the said Guadalupe Bent was, or would have been ineffectual to bind said complainants or that the said last-mentioned decree, entered at the September term, 1866, of the said district court, and the before-mentioned conveyance of the said Guadalupe Bent, to the said Lucien B. Maxwell, were or are, or either of them was or is void, as against said complainants.

This defendant denies that the said grant contains two million of acres or thereabouts, or abounds in valuable mines of gold or silver, or that the interest or share of said complainants therein, at the time of the entry of the said decree, at the September term, 1866, of the said district court was reasonably worth the sum of one hundred thousand dollars and more, or any sum whatever, or that the said complainants then or ever had any interest or share of said grant of lands. It admits that the said grant extends beyond the northern border of the Territory of New Mexico, and that two hundred thousand acres, or thereabouts, of land within the limits of the State of Colorado, are within the limits of said grant, but it avers with reference thereto, that the said grant was wholly included within the Territory of New Mexico, until about A. D. 1862, when the Territory of Colorado was organized, and that the boundary between Colorado and New Mexico was not surveyed or located until the year A. D. 1868,

47 and that prior to said last-mentioned year, said boundary was generally supposed by persons living in New Mexico, to be in the vicinity of the town of Trinidad, and that according to such supposition, the whole of said grant would lie within the Territory of New Mexico.

This defendant, on information and belief, denies that the said Alfred Bent left a considerable estate in houses and lands, other than the said grant, and in moneys and personal property, or that the said Guadalupe Bent, out of the said estate, was then or always or at any time afterwards, well able to support and educate complainants, and denies that the said Alfred Bent or complainants owned or possessed any part of, or interest in said grant.

This defendant denies that all and singular the facts in said bill alleged, touching the extent and value of the said grant, or the estate, real and personal, other than said grant, left by the said Alfred Bent, or the alleged ability of the said Guadalupe, out of the said estate to maintain and educate complainants, or the facts, as alleged, touching the execution by the said Guadalupe Bent of the said conveyance to Lucien B. Maxwell, or the alleged fraud and imposition practiced upon her in procuring the said conveyance, were by the procurement of the said Lucien B. Maxwell, or otherwise, concealed from the said district court at the time of the entry of the said decree at the September term, A. D. 1866, of said district court.

This defendant, upon the advice of counsel, denies that the said decree so entered at the September term, A. D. 1866, of the said district court, directing conveyance by the said Guadalupe Bent as guardian *ad litem* of complainants to the said Lucien B. Maxwell and vacating and setting aside the said former decree of said district court, is erroneous as in said bill alleged in this, to wit: that it appears by the record thereof that the said district court, entered
48 said decree upon the consent merely of parties, without setting forth who assumed to represent complainants, or consent thereto, in complainants' behalf. Or in this, to wit: that it appears by the record of the said decree that although said complainants were infants of tender age, the said decree was made and given by the said district court by and upon consent of parties merely, and without any reference to the master, or the examination of witnesses or judicial inquiry, as to whether in fact such agreement of parties as therein recited had been made, or whether the said decree was or would be beneficial to said complainants, or whether any necessity existed for the sale or disposition of said complainants' alleged interest in the said grant of lands. And this defendant denies that it appears by the record of said decree so as above in this paragraph, and in said bill recited.

Or in this, to wit: that it appears by the record of the said decree, that the said district court thereby directed, that the said Guadalupe Bent should convey said complainants' interest in the said lands for a fixed sum and to a certain person.

Or in this, to wit: that by the record of said decree, it appears that thereby the said district court directed the conveyance of said

complainants' interest in the said lands to the said Lucien B. Maxwell by a day certain, and did not fix or limit any day for the payment by the said Maxwell of the said sum of six thousand dollars.

Or in this, to wit: that it appears by the record of the said decree, the said district court thereby assumed to and did assume to dispose of and convert into money the freehold estate in lands of said complainants, thus being infants of tender years, without any reason, cause or necessity existing, or shown to exist for such disposition, or any disposition thereof, and without any direction or security for the investment or preservation of the said moneys, and defendant denies, that it appears by the record of the said decree so as above, in this paragraph and in said bill recited.

49 And this defendant denies that the said complainants ever had any freehold estate in the said lands; or any estate or interest therein; but avers that if they had any interest whatever therein, the same was not a legal estate or interest, but only a mere equitable interest therein; that the said decree at the September term, 1866, of said district court, was made and given for the purpose of carrying into effect upon the record a compromise of the then pending and undetermined litigation between the parties touching such alleged equitable interest or claim; that the said compromise had in fact been fully made and completed some months prior to the making of the said decree, settling and determining all the equities in that said suit, and that the deeds in said decree, required to be executed, had already been executed and delivered to said Lucien B. Maxwell, and the said Lucien B. Maxwell had already paid to the complainants in that said suit, the sum of eighteen thousand dollars, including the sum of six thousand dollars to the said Guadalupe Bent, and that the said decree was in fact intended and treated as a confirmation by the said court of the said compromise, conveyances and payments. And this defendant denies that said decree hath never been carried into execution, or that no such conveyance as in said decree directed, hath ever been made by the said Guadalupe Bent, or that said Lucien B. Maxwell, or any one for him hath never paid the moneys therein directed to be paid to the said Guadalupe Bent.

This defendant admits, that the said, The Maxwell Land Grant and Railway Company and Lucien B. Maxwell and Luz B. Maxwell, about the year 1870, exhibited in the district court, in and for the said county of Colfax, in the Territory of New Mexico, their certain bill of complaint against said complainants, and the said Guadalupe Thompson, as administratrix of the estate of the said Alfred Bent and the said George W. Thompson, her husband, setting forth among other things the said two decrees of the
50 district court of the said county of Taos, and praying among other things that the trust, in the first-mentioned decree established and declared, might be adjudged, terminated and extinguished; that the said now complainants, by George Boyles, their guardian *ad litem*, as also the other defendants in that said suit, answered that said bill of complaint, and that the further proceed-

ings in that said suit were had as in the bill alleged. And this defendant avers that that said suit is now pending, and is set down for final hearing upon the merits thereof; that the same involves all the issues that are presented in this suit; that all the necessary parties to this suit are parties thereto; that the same is pending in a court having full jurisdiction of the parties and subject-matters of this suit, and this defendant is advised and insists, that the pendency of that said suit, is a bar to the prosecution of this suit, and it craves the same benefit of this defense in this its answer, as if it had availed itself thereof by plea.

As to whether the said complainants by reason of the said decree of September, 1866, and the conveyances by the said Guadalupe Bent, have been unable to have execution of the said decree of partition, as in said bill alleged, this defendant is advised, and insists, that the said complainants were complainants in the said suit in which the said decree of partition was made, and could at all times have proceeded in that said suit to take the same steps, and ask the same relief as they seek in this suit.

This defendant admits the death of some of said commissioners, and the conveyance by said Lucien B. Maxwell and wife, the death of the said Maxwell and other parties as in the bill alleged, and that this defendant claims some interest in the said lands under the said Maxwell Land Grant and Railway Company as alleged.

This defendant denies that the said, The Maxwell Land Grant and

51 Railway Company, or this defendant have cultivated or tilled, large tracts of land within the limits of the said grant, or opened divers mines of coal and other metals and minerals, and have been wont to extract large quantities of ores, metals and minerals from the said mines, or that from the cultivation of the said lands or the sale of the products thereof, or the sale of the ores, metals and minerals, mined or extracted therefrom, or from the letting of divers other tracts of land within the said grant, the said companies or either of them have derived great gains or profits, or that any part thereof is payable to said complainants.

And this defendant further answering says that the said The Maxwell Land Grant and Railway Company, by its two certain trust deeds, dated the 13th day of June, A. D. 1870, and the 1st day of November, A. D. 1872, respectively, conveyed the said grant and tract of land, with certain small reservations in said trust deeds specified, unto Thomas A. Scott and Samuel M. Felton and the Farmers' Loan and Trust Company, as trustees to secure the payment of certain mortgage bonds, issued and sold by the said Maxwell Land Grant and Railway Company. That afterwards, on or about the 27th day of March, A. D. 1880, the said grant and tract of land was sold at public auction by one F. W. Clancy, as master in chancery; pursuant to two certain decrees of foreclosure of the said trust deeds rendered by the district court of the first judicial district of the Territory of New Mexico, sitting in and for the county of Colfax, and by proper deeds duly conveyed to one Frank R. Sherwin and one Lucien Birdseye jointly at and for the sum of one million, one hundred thousand dollars, and that afterward, on

or about the 31st day of May, 1880, the said Frank R. Sherhin and Lucien Birdseye, who this defendant avers had purchased the same at said master's sale for and on behalf of this defendant, did by their certain deed of that date, duly convey the said grant and tract of land so purchased by them to this defendant. All of which will more fully appear by reference to copies of the said several

52 trust deeds, decrees, master's deeds and conveyances, which this defendant craves leave to file herewith as a part of this its answer, and to refer to the same at the hearing.

And this defendant further answering says, that it is advised that the said decree of the said district court for the county of Taos, made on or about the 3d day of June A. D. 1865, was an interlocutory decree, rendered upon a bill brought to establish an equitable interest in an undivided share of the said grant and tract of lands, and for a partition thereof. That the said bill was founded upon an alleged parole agreement by the said Guadalupe Miranda and Charles Beaubien to give and convey unto the said Charles Bent, the ancestor of said complainants, a certain undivided portion of said grant. That the said bill required the several defendants thereto to answer the same upon oath; that the said Beaubien and the said Miranda, each for himself answered the said bill upon oath and denied that the said agreement had ever been in fact made. That no proof was taken or produced in the said cause that such agreement had ever been made. That neither by the allegations of the said bill, nor by any proofs in the said cause does it appear that there was any valid consideration for the said pretended agreement, or that there had been any performance thereof, in whole or in part by the said Beaubien and Miranda, or either of them, or that any possession had been given to the said Charles Bent, or that the said Charles Bent, had entered upon the said lands or any part thereof or made any improvements thereon. But to the contrary thereof it appears in and by the said bill that the alleged consideration for the said pretended agreement was illegal, against public policy and wholly void in law or equity, and that any agreement founded thereon was and is void. That the said interlocutory decree was erroneous and not warranted by the pleadings or proofs, and should and would have been reversed upon appeal had the said decree ever been made final so that an appeal therefrom could have been taken.

53 This defendant further answering, says that after said interlocutory decree had been given, and before the commissioners appointed thereby, to make partition of the said lands had acted, or any further proceedings in said cause had been taken, an agreement by way of a compromise of the said suit was made by and between the parties thereto, settling and determining the equities thereof whereby the said Lucien B. Maxwell was to pay to the then complainants, the alleged heirs of the said Charles Bent, the sum of eighteen thousand dollars, in full settlement of all the claims and demands of the said heirs of said Charles Bent for any portion of the said grant, and as full payment for any right, title or interest therein, which they might have, and that in consideration

of the said sum of eighteen thousand dollars, the said claims, demands, rights and interests, if any they had, of the said heirs of said Charles Bent, including the said Estefana Hicklin and Teresina Schöarick, and the said Alfred Bent, and afterwards the said Guadalupe Bent and the said Charles, Juliano and Alberto Silas Bent as the heirs of the said Alfred Bent, were to be released, transferred and conveyed to the said Maxwell. That the said agreement and settlement was made upon the advice of the counsel for the said complainants in that said suit, and was in all material respects fully considered and approved by the said Alfred Bent, in his lifetime, although not formally concluded until after his death. That upon the suggestion of record of the death of the said Alfred Bent, his said minor children were made parties complainant and the said Guadalupe Bent was, at the April term, 1866, of the said district court upon motion of the counsel for said complainants duly appointed guardian *ad litem* for the said minor children of the said Alfred Bent, with full power to convey the interests of the said children in the said lands. That afterwards on or about the 3rd day of May, 1866, the said agreement and settlement was carried into effect, and the transfers of the said claims and alleged

54 interests of the said Teresina and Estefana, Guadalupe Bent, and the said minor children, Charles, Juliano and Alberto Silas Bent, were made to the said Maxwell by the execution and delivery of the said deeds, as in the bill mentioned, and the said Maxwell at the same time paid to the said then complainants, the said sum of eighteen thousand dollars, partly in cash, and partly in promissory notes, which were afterwards all duly paid, and that of the said amount the sum of six thousand dollars was duly paid to the said Guadalupe Bent.

That afterwards, as this defendant is advised, among other reasons, for the purpose of more fully carrying into effect the said agreement and settlement, upon the records of the court in which the said suit was pending, the said decree was made and entered at the September term, 1866, of said district court, vacating the said former interlocutory decree, and directing the said payments to be made and conveyances to be executed, which had in fact previously thereto been fully done. That the said compromise was considered and accepted by the said court in behalf of the said minors as advantageous to them, and that the said acts previously done pursuant to the said compromise were, and were assumed to be, and accepted as, sufficient compliance with the directions of said decree.

This defendant further answering says, that the price, so as aforesaid paid, by the said Maxwell in settlement for the claims of the said heirs of Alfred Bent, to wit: the sum of six thousand dollars, was at the time of said settlement and compromise, a fair and adequate price for an undivided one-twelfth part of said grant, with an undisputed title, and much more in proportion than other undisputed interests in said grant sold for at the same time and afterwards, and was an extremely liberal price, for the doubtful and uncertain equitable claim of the said Alfred Bent and his heirs.

And this defendant says that by the said agreement, so as
55 aforesaid made, by and between the said Maxwell and the
complainants in that said suit, all of the right, title and in-
terest, if any, of the said Charles Bent and of the said complainants
derived from the said Charles Bent, became and was transferred to
and vested in the said Lucien B. Maxwell, and the equitable right,
title and interest, if any, of the said complainants and each of them,
and all trusts if any, existing in their favor in the said premises,
and every part thereof, were and are wholly extinguished and ter-
minated.

This defendant further answering says that on or about the 1st
day of August, A. D. 1870, the said The Maxwell Land Grant and
Railway Company, and the said Lucien B. Maxwell and Luz B.
Maxwell, exhibited their bill of complaint in the district court for
the county of Colfax, Territory of New Mexico, against the said
Guadalupe Bent, now Thompson, and George W. Thompson, her
husband, and the said complainants, Charles, Juliano and Alberto
Silas Bent, praying among other things, that the trust in and by
the said interlocutory decree declared, be adjudged to be termi-
nated and extinguished; that all the said parties defendants, includ-
ing the said minors, by one George Boyles, their guardian *ad litem*,
answered the said bill, the said George Boyles, then an attorney of
said court, having been by the said court, appointed guardian *ad*
litem upon the petition of the said George W. Thompson, averring
that he was the stepfather of said children, and expressly praying
the appointment of said Boyles, as aforesaid; that proofs were taken
and heard thereon, and a decree rendered by the said district court,
whereby among other things it was decreed, that the said premises
be and were held by the said, The Maxwell Land Grant and Rail-
way Company, free and discharged of any and all trusts, right, title
and interest in or to the same, in favor of, or pertaining to the said Gua-
dalupe Thompson, either in her right, or as administratrix of the estate
of the said Alfred Bent, deceased, the said George Thompson, her hus-
band, the said Charles Bent, Alberto Silas Bent, Juliano Bent,
56 or any or either of them; that the said decree was upon ap-
peal to the supreme court of the Territory of New Mexico
affirmed; that on further appeal to the Supreme Court of the
United States the said decree was reversed, for the reason that the
said bill upon which the said decree was founded, was erroneously
framed as a bill of review, to reverse and annul the said decree of
September 1866 whereas it should have been framed as a bill to
carry the said decree more effectually into execution; that the said
Supreme Court, after deciding that the proofs in said cause show a
case which supports the conclusions of the said decree, nevertheless,
on account of the said errors in the frame of said bill, reversed the
same and remanded the same to the court below with directions to
allow the complainants therein to amend there bill, and with liberty
to the defendants therein to answer any new matter introduced
therein and that all the proofs in the said cause should stand as
proofs upon any future bearing thereof, with liberty to either party
to take additional proofs upon any new matter that might be put in

issue by the amended pleadings, all of which will more fully appear by the record of the said cause, and the decision and mandate of the said Supreme Court, to which this defendant craves leave to refer at the hearing as a part hereof; copies of which it prays leave hereafter to file.

That the said complainants therein have amended their said bill in conformity with the opinion of the said Supreme Court and that the defendants therein have answered the same, and the said cause is now set down for final hearing upon the said amended pleadings, and the proofs as they were formerly taken, without any additional proofs having been taken by either of said party. And this defendant avers, that in the said last-mentioned suit so as aforesaid pending, it was and is, in and by the answer of the several defendants thereto averred and insisted that the said decree of September 1866

57 was illegal and void as to the said minor children, and was and is denied that by the said proceedings in the said bill alleged, the said minor heirs of said Alfred Bent were in any manner divested of any title, either legal or equitable, they had at the time in said grant or tract of land, and was and is averred that the said deed of the said Guadalupe Thompson was illegal, void and inoperative, so far as the rights and interests of the said minors were concerned.

And this defendant is advised and insists, as it has hereinbefore insisted, that the said last-mentioned suit, so as aforesaid pending, involves all the matters and things in the bill herein set forth, with all the necessary and proper parties for the determination thereof, and that the same is and will be a bar to the prosecution of this suit.

And this defendant further answering says, that in the said suit, so as aforesaid pending in this court, although the said Guadalupe Bent, now Thompson, and the said George W. Thompson who now brings the bill of complaint herein, as the next friend of the said Alberto Silas and Julianio Bent, were parties defendant thereto, and fully answered the bill therein as aforesaid, and the said Charles, Alberto Silas, and Julianio Bent were duly represented therein by the said George Boyles, so upon the prayer of the said George W. Thompson appointed guardian *ad litem* for the said then minors, and although proofs were fully taken upon the issues therein; it was never at any time, either in the said answers or proofs, averred, alleged, claimed, insisted or suggested, that the said decree of September, 1866, or the said conveyance by the said Guadalupe Bent, had been procured to be given or made through fraud, misrepresentation, imposition or any of the said alleged improper practices in the bill herein mentioned. And this defendant is advised and so avers, that the said George W. Thompson and the said Guadalupe Thompson, at the time of making and filing their said answers in said suit, had and possessed the same knowledge and means of knowledge touching the said decree and deed, and the proceedings in connection therewith, as they have had, or could have had at any time subsequent thereto, and this defendant avers that with

58 reference to the said decree, deed and proceedings in connection

therewith, in the investigation of the title to the said grant and tract of land at the time of its purchase thereof as aforesaid, it had as means or source of information, other than the record of the said suit, and the pleadings and proofs therein, in which the validity of the said decree, deed and proceedings was in issue. And that from the said record, pleadings and proofs, or otherwise, it had and could have had, no notice or knowledge whatever of the said alleged frauds, misrepresentations and other improper practices in the bill herein alleged.

And this defendant further answering says that the said Frank R. Sherwin and Lucien Birdseye, in purchasing the said grant and tract of lands at the said master's sale, as aforesaid, acted merely as a purchasing committee for and on behalf of the holders of the said mortgage bonds of the said The Maxwell Land Grant and Railway Company, and for the purpose of transferring the said property to these defendants then being organized by the said bondholders, with a view of acquiring the said property upon said foreclosure sale; that as such purchasing committee the said Sherwin and Birdseye, at the time of that said purchase, duly paid to the said master in chancery, for the said grant, the sum of one million and sixty thousand dollars in the said mortgage bonds at par, and forty thousand dollars in cash, of the property of the said bondholders, and for and on behalf of this defendant corporation then being organized by said bondholders. That the said Sherwin and Birdseye thereafter, as they were in duty bound to do, transferred and conveyed the said property to this defendant.

And this defendant therefore avers and insists that it is a *bona fide* purchaser for a valuable consideration of all and singular the premises described in the said bill of complaint herein and
 59 in its title deeds aforesaid, without any notice or knowledge whatever of the said alleged wrongful or fraudulent transactions or combinations in the said bill set forth.

And this defendant denies all manner of unlawful combination in and by the said bill charged, without —, that any other matter or thing in the complainant's said bill contained, material or necessary for this defendant to make answer unto, and not herein well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready to aver and prove when and where this honorable court shall direct, and it prays to be hence dismissed with its costs in this behalf most wrongfully sustained.

THE MAXWELL LAND GRANT
COMPANY.

T. B. CATRON,
FRANK SPRINGER,

[SEAL.]

Solicitors for Defendant.

And afterwards, to wit, on the 24th day of October, 1884, there was filed in said clerk's office, the joint and several answer of defendants, which answer is in words and figures as follows, to wit:

Joint and Several Answer of Defendants.

No. 435.

TERRITORY OF NEW MEXICO, {
County of Colfax. }

In the District Court for the First Judicial District, Sitting within
and for the County of Colfax. In Chancery.

CHARLES BENT *et al.*

vs.

THE MAXWELL LAND GRANT AND RAILWAY CO. *et al.* }

The joint and several answer of The Maxwell Land Grant and Rail-
way Company, Guadalupe Miranda, Jesus G. Abreu, sur-
viving executor of the last will of Charles Beaubien; Luz
B. Maxwell, Petra Abreu and Jesus G. Abreu, her hus-
band; Juana Clouthier and Joseph Clouthier, her husband;
Pablo Beaubien, Virginia Keyes and — Keyes, her husband;
Peter Maxwell, Amelia Abreu and — Abreu, her husband;
Estefana Hicklin, Sophia Jaramillo, Benigna Mares and Vicente
Mares, her husband; Teresina Scheurick and Aloys Scheurick,
her husband, to the bill of complaint of Charles Bent, Julianio
Bent, and Alberto Silas Bent, complainants.

These defendants, saving and reserving all manner of benefit and
advantage to themselves of exception to the many errors and insuffi-
ciencies in the said bill of complaint contained, for answer thereto,
or to such parts thereof as these defendants are advised is material
for them to make answer unto, answer and say:

They admit the grant of land to Charles Beaubien and Guada-
lupe Miranda, and the confirmation thereof by Congress, as stated
in the bill; they admit the suit brought about the 12th day of
September, 1859, by Alfred Bent and others against Guadalupe
Miranda and others, and the proceedings had therein, and the decree
rendered therein on or about the 3rd day of June, 1865, of the pur-
port stated in the bill; they deny that by said decree the undivided
fourth part of said grant of land was established and confirmed to
the said Albert, Estefana and Teresina Bent; they admit the con-
veyances by the said Miranda and the heirs of the said Beaubien to
said Maxwell as stated; they admit the death of Charles Bent and
that his children Charles, Julianio and Alberto Silas Bent were made
parties complainant in the said suit, but deny that the said Alfred
died intestate, or that the said children were his sole heirs-at-law.
They admit that the said Guadalupe was appointed guardian
ad litem of the said children in said suit, but deny that it was with
the powers as stated in the bill; they admit the decree rendered at
the September term, 1866, of said district court in and for the
county of Taos; they admit the conveyances by the said Aloys
Scheurick and Teresina, his wife, and the said Alexander

Hicklin and Estefana, his wife, and the said Gaudalupe Bent, to the said Maxwell as stated.

Defendants deny that said Guadalupe is a Mexican woman, or ignorant as stated in the bill; they admit that she was wont to consult with said Scheurick, and that she reposed special truse and confidence in him; they deny that said Maxwell was a man of great power and influence as stated, or that he caused or procured the said Guadalupe to be appointed guardian *ad litem* as stated, or the said conveyances to be prepared as stated, or caused or procured the said Aloys Scheurick to believe or represent, or that the said Scheurick did represent, to the said Guadalupe Bent any of the matters in the bill charged in that behalf; they deny that the said Guadalupe executed the said conveyance moved and induced by the representations in said bill stated, or that the said conveyance was not interpreted or explained to her, or executed without the advice of counsel, or that the said Guadalupe was at the time ignorant of the character or extent of said grant, or the value thereof, or of the rights and shares of complainants.

Defendants deny that neither then nor at any time afterward, did the said Maxwell pay to the said Guadalupe Bent the said sum of six thousand dollars; they deny that neither the said Guadalupe Bent, nor the counsel or solicitor of the said Guadalupe, nor any other person authorized to agree or consent for complainants, did in fact agree or consent as in said last-mentioned decree is recited; nor to the vacating or setting aside of said first-recited decree; or that such consent, if given, was obtained by the importunity or fraudulent or false representations of said Scheurick as stated, or that the said Scheurick or other person or persons, by procurement of the said Maxwell caused it to be falsely represented to the said district court as in the bill stated, or that the said district court, by reason of such alleged false representations or without inquiry or judicial examination as stated, gave and entered the said decree.

Defendants on advice of counsel deny that the said decree entered at the September term, A. D. 1866, or the before-mentioned conveyance of the said Guadalupe Bent to the said Lucien B. Maxwell, were, or are, void as against complainants.

Defendants deny that the said grant contains two millions of acres or thereabouts, or that the interest or share of complainants therein at the time of the entering of the said decree at the September term, 1866, was reasonably worth the sum of one hundred thousand dollars, or any sum whatever; they deny that the said Alfred Bent left a considerable estate in houses and lands, and in moneys and personal property, or that the said Guadalupe out of the said estate was then or always afterwards able to support and educate complainants, as stated in the bill, or that the said or any facts as stated in said bill, concealed from said district court at the time of the entry of the said decree at the September term, 1866.

Defendants upon advice of counsel, deny that the decree aforesaid, entered at the September term, 1866, of said district court, directing conveyance by the said Guadalupe Bent as guardian *ad litem* of

said complainants to the said Lucien B. Maxwell, and vacating and setting aside the former decree of said district court, is erroneous in any of the particulars in the bill set forth.

Defendants admit that the said The Maxwell Land Grant and Railway Company and the said Lucien B. Maxwell and Luz B. Maxwell about the year 1870 exhibited in the district court in and for said county of Colfax, in the Territory of New Mexico, their bill of complaint against complainants and the said Guadalupe Thompson, and George W. Thompson, her husband, as stated in the bill,

63 and that various proceedings were had in said cause as stated, and they aver that the said cause is still pending, and insist that the pendency of the said cause is a bar to the prosecution of this cause.

Defendants admit the conveyances by said Maxwell to said Maxwell Land Grant and Railway Company as stated, but deny that the said Maxwell Land Grant and Railway Company derived great or any gains or profits from the said grant as stated, or that any part thereof is payable to complainants.

And these defendants deny all manner of unlawful combination in and by the said bill charged without this, that any other matter or thing in the complainants' said bill contained, material or necessary for these defendants to make answer unto and not herein well and sufficiently answered, confessed, traversed, avoided or denied, is true to the knowledge or belief of these defendants. All of which matters and things these defendants are ready to aver, maintain and prove as this honorable court shall direct, and pray to be hence dismissed with their costs in this behalf most wrongfully sustained.

T. B. CATRON,
FRANK SPRINGER,
Solicitors for Defendants.

And afterwards, to wit, on the 26th day of November, 1884, there was filed in said clerk's office the following replication, which replication is in words and figures as follows, to wit:

Replication.

No. 435.

TERRITORY OF NEW MEXICO, }
 County of Colfax. }

In the District Court for the First Judicial District, Sitting within
 and for the County of Colfax. In Chancery.

CHAS. BENT *et al.*

vs.

THE MAXWELL LAND GRANT AND RAILWAY CO. *et al.* }

64 The replication of Charles Bent, Juliano Bent, and Alberto Silas Bent, complainants, to the several answer of the Maxwell Land Grant Company and the joint and several answers of the Maxwell Land Grant and Railway Company, Guadalupe Miranda, Jesus G. Abreu, surviving executors of the last will of Charles Beaubien; Luz B. Maxwell, Petra Abreu and Jesus G. Abreu, her husband; Juana Clouthier and Joseph Clouthier, Pablo Beaubien, Virginia Keyes and — Keyes, her husband; Peter Maxwell, Amelia Abreu and — Abreu, her husband; Estefana Hicklin, Sophia Jaramillo, Benigna Mares and Vicente Mares, her husband; Teresina Scheurick and Aloys Scheurick, her husband.

These repliants saving unto themselves all advantage of exception to the manifold insufficiencies of the said answers, by way of replication thereto saith: That the original bill of these complainants exhibited in this court, against the said defendants, and the matters therein contained, are true, certain and sufficient in law to be answered unto by the said defendants, and the answers of the said defendants are untrue, uncertain and insufficient to be replied unto by *this* repliant, without this, that any other matter or thing in said answers or either thereof contained material in law to be replied unto, confessed, avoided, traversed or denied, is true, all of which matters and things there repliants are and will be ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have prayed.

CALDWELL YEAMAN,
 WELLS, SMITH & MACON,
Solicitors for Complainants.

65 And afterwards, to wit: on the 21st day of January, A. D. 1885, there was filed and entered of record in the said clerk's office, the following decree *pro confesso*, which said decree *pro confesso* is in words and figures as follows, to wit:

66

Decree pro Confesso.

No. 435.

TERRITORY OF NEW MEXICO, }
County of Colfax. }

In the District Court, County of Colfax. In Vacation.

CHARLES BENT *et al.* }
vs. } Chancery.
 GUADALUPE MIRANDA *et al.* }

On reading and filing the certificate of the clerk and register of this court to the effect that no appearance has been entered in this cause by or for said defendants, the unknown heirs of Joseph Pley, unknown heirs of Leonora Trujillo and Guadalupe Thompson, and after hearing Caldwell Yeaman, Esquire, of counsel for said complainants, it is ordered, adjudged and decreed by the court that the bill of complaint herein be, and the same hereby is taken as true and confessed by the said defendants, the unknown heirs of Joseph Pley, unknown heirs of Leonora Trujillo and Guadalupe Thompson.

S. B. AXTELL,
Chief Justice, etc.

67 And afterwards, to wit: on the 14th day of May, 1892, there was filed in said clerk's office the following stipulation, which stipulation is in words and figures as follows, to wit:

TERRITORY OF NEW MEXICO, }
County of Colfax. }

In the District Court for the Fourth Judicial District.

68 THE MAXWELL LAND GRANT AND RAILWAY }
 Co. *et al.*, Complainants, } In Chancery.
 vs. } No. 356.
 GUADALUPE THOMPSON *et al.*, Defendants. }

CHARLES BENT *et al.*, Complainants, }
 vs. } In Chancery.
 THE MAXWELL LAND GRANT AND RAILWAY Co. } No. 435.
 et al., Defendants. }

It is hereby stipulated between and by the counsel therein that the above-entitled causes, numbered respectively Nos. 356 and 435, may be heard and determined together upon the proofs now on file in either of said causes; and that all proofs filed in either cause may be considered as if duly taken and introduced in both causes; that the transcript of the record in said cause No. 356 as filed in the supreme court of the Territory of New Mexico for the hearing

upon appeal at the January term, A. D. 1885, and as corrected by the stipulation filed October 22, 1884, may be considered as containing the pleadings, proofs, and matters of record in said cause up to the date when said transcript was made, and may be used and considered in both of said causes as above stated.

This stipulation shall apply as well to the hearing of said causes in the district court as to any hearing that may be had upon appeal of either of said causes.

Dated Las Vegas, April 30th, 1892.

(Signed)

FRANK SPRINGER,
Solicitors for Complainants in No. 356 and
Defendants in No. 435.

69 (Signed)

WELLS, McNEAL & TAYLOR,
CALDWELL YEAMAN,
Solicitors for Defendants in No. 356 and
Complainants in No. 435.

And afterwards, to wit: on the 8th day of May, A. D. 1893, there was filed and entered of record in said clerk's office the following order of court dismissing said cause at complainants' costs, which said order is in words and figures as follows, to wit:

In the District Court for the Fourth Judicial District in and for the County of Colfax.

CHARLES BENT, JULIANO BENT and ALBERT
SILAS BENT, *et al.*

vs.

THE MAXWELL LAND GRANT AND RAILWAY
COMPANY, GUADALUPE MIRANDA, *et al.*

} Chancery. No. 435.

This cause coming on to be heard upon the plaintiffs' exhibits and proofs on file herein, and the stipulation on file signed by the solicitors of the respective parties, dated the 30th day of April, A. D. 1892, and full argument having been at a former day made therein by Mr. Caldwell Yeaman and A. T. McNeal, counsel for complainants, and Mr. Frank Springer, of counsel for defendants, and due deliberation having been had thereupon, the court finds the equities of said cause to be with the defendants.

It is therefore considered, ordered and adjudged that the bill of complaint in this cause be and the same hereby is dismissed, and that said complainants pay the costs of this suit to be taxed.

70 Dated Las Vegas, New Mexico, May 8th, A. D. 1893.

(Signed)

JAMES O'BRIEN,
Chief Justice, etc.

71 Now, to wit, on the 1st day of May, A. D. 1894, the above application in the above-named cause having been presented to the court, after hearing the said solicitors, Caldwell Yeaman and R. T. McNeal, on behalf of the complainants it is hereby ordered and decreed that the complainants in said cause, Charles Bent, Juliano

Bent, Alberto Silas Bent, and all the complainants named in the bill and proceedings in the said chancery cause numbered 435, be and they are hereby allowed to appeal from the decree rendered in said cause, and entered therein on the 8th day of May, A. D. 1893, and to appeal the said cause from the said district court to the supreme court of the Territory of New Mexico; and it is further ordered that citation issue to all the defendants in the said cause as in the said application asked for.

Dated Las Vegas, New Mexico, May 1st, A. D. 1894.

THOMAS SMITH,

Chief Justice, etc.

72 And afterwards, to wit, on July 29, 1895, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico an assignment of errors in said cause; which said assignment was and is in the words and figures following, to wit:

In the Supreme Court of the Territory of New Mexico, July Term, 1895.

CHARLES BENT, JULIANO BENT, ALBERTO
SILAS BENT, Appellants,

vs.

THE MAXWELL LAND GRANT AND RAIL-
way Company, Guadalupe Miranda,
Jesus G. Abreu, as Executor of the
Last Will of Charles Beaubien; Luz B.
Maxwell, Petra Abreu, Jesus G. Abreu,
Her Husband; Juana Clothier and
Joseph Clothier, Her Husband; Pablo
Beaubien, Virginia Keyes and —
Keyes, Her Husband; Peter Maxwell,
Amelia Abreu and — Abreu, Her
Husband; Sophia Jaramillo, Pablito
Maxwell, Odila Maxwell, Benigna
Mares and Vicente Mares, Her Hus-
band; The Unknown Heirs of Joseph
Pley, Deceased; Estefana Hicklin,
Teresina Scheurich, Aloys Scheurich,
Her Husband; Guadalupe Thompson,
The Maxwell Land Grant & Railway
Company, The Unknown Heirs of Leo-
nora Trujillo and of Frederick Miller
and Theodora Miller, His Wife; Cyrus
W. McCormick, and James M. Miller,
Appellees.

No. 579. Appeal from
Fourth District Court,
Colfax County.

Assignment of Errors.

And the said appellants, by Caldwell Yeaman and Wells, Mc-
Neal & Taylor, their attorneys, come now and say that in the record

and proceedings of said district court and the decree given in the said district court manifest error hath intervened in this, to wit:

That by the record and proceeding- of the said district court it doth appear that the said district court by its final decree
73 herein dismissed the bill of complaint of the said appellants out of the said district court and decreed that the said appellants should pay the costs of their said suit, whereas by the law of the land decree ought to have been given in the said district court in favor of the said appellants and according to the prayer of the bill of complaint herein.

Wherefore, for the errors aforesaid and the manifold other error in the said record and decree appearing, appellants pray that the decree of the said district court may be reversed, annulled, and altogether held for naught, and they also pray judgment for their costs.

CALDWELL YEAMAN,
WELLS, McNEAL & TAYLOR,
Attorneys for Appellants.

And afterwards, at a regular term of the supreme court of the Territory of New Mexico, begun and held at Santa Fé, New Mexico, the seat of government of said Territory, on the last Monday in July, 1895, on the thirtieth day of said term, the same being Wednesday, October 9, 1895, the following, among other, proceedings were had, to wit:

CHARLES BENT <i>et al.</i> , Appellants,	} 579. Appeal from Colfax County.
<i>vs.</i>	
GUADALUPE MIRANDA <i>et al.</i>	

This cause having been argued by counsel and submitted to and taken under advisement by the court upon a former day of the present term, the court, being now fully advised in the premises, announces its decision by Associate Justice Collier affirming the decree of the court below, Associate Justices Laughlin, Hamilton, and Bantz concurring. It is therefore ordered, adjudged, and decreed by the court that the decree of the district court in and for the county of Colfax, whence this cause came into this court, be, and the same hereby is, affirmed, and that this cause be, and the same hereby is, remanded to said district court, with directions to carry into effect said decree dismissing said bill of complaint; and it is further ordered, adjudged, and decreed by the court that said appellants pay all costs in this behalf expended, to be taxed, and that execution issue therefor.

And afterwards, at the term of said supreme court last aforesaid, on the thirty-fifth day thereof, the same being Tuesday, October 15, 1895, the following, among other, proceedings were had, to wit:

73½ CHARLES BENT *et al.*, Appellants, } 579. Appeal from
vs. District Court of
 GUADALUPE MIRANDA *et al.*, Appellees. } Colfax County.

Now come the said appellees, by their solicitor, Frank Springer, Esq., and the said appellants come by their solicitor, R. T. McNeal, Esq., and said appellants pray an appeal from the judgment and decree of this court in this cause to the Supreme Court of the United States, and the court, being sufficiently advised in the premises, grants said motion. It is therefore considered and adjudged by the court that said appellants be, and they hereby are, allowed an appeal from the judgment and decree of this court in this cause to the Supreme Court of the United States; and it is further ordered by the court that said appellants enter into a good and sufficient bond to appellees in the sum of five hundred dollars, with sureties to be approved by the clerk of this court, conditioned for the payment of all costs in connection with this appeal; and thereupon the court makes and certifies a statement of the facts herein for the purpose of such appeal and orders that the same be made a part of the record in this cause.

And afterwards, to wit, on the 15th day of October, 1895, there *was* filed in the office of the clerk of said supreme court the findings of fact made and certified by the court in said cause; which said findings of fact are in the words and figures following, to wit:

74 In the Supreme Court of the Territory of New Mexico, July Term, 1895.

CHARLES BENT *et al.*, Appellants, }
vs. } No. 579.
 GUADALUPE MIRANDA *et al.*, Appellees.

THE MAXWELL LAND GRANT AND RAILWAY COMPANY }
et al., Appellees, } No. 581.
vs. }
 GUADALUPE THOMPSON *et al.*, Appellants.

Now, on this day, come the appellants, by their counsel, and move the court to make and certify a statement and finding of the facts for the purpose of an appeal to the Supreme Court of the United States, and thereupon the court grants said motion.

And the court now, being sufficiently advised and pursuant to the statute in such cases made and provided, does make and certify the following as a statement and finding of the facts proven and established by the evidence in each of the above-entitled causes, to wit:

In the year 1841 a grant of land was made by the Mexican government to Charles Beaubien and Guadalupe Miranda of a tract of land situate in the present Territory of New Mexico and which afterwards came to be and now is commonly known as the Maxwell

grant. They were placed in possession of it in 1843. The grant was confirmed by act of Congress approved June 21st, 1860. In September, 1859, Alfred Bent and his two sisters, Estefana, 75 wife of Alexander Hicklin, and Teresina, who soon after became the wife of Aloys Sheurich, set up a claim to one-third undivided interest in the said grant in the right of their father, Charles Bent, who had died in 1847. They began an action in chancery in the district court of the Territory of New Mexico in and for the county of Taos against Beaubien, Miranda, L. B. Maxwell, and Joseph Pley, by filing their original bill September 12th, 1859, in words and figures following :

UNITED STATES OF AMERICA, }
Territory of New Mexico, County of Taos, } ss.:

In the United States District Court for the 2nd Judicial District of the Territory of New Mexico, September and October Term, A. D. 1859.

To the Honorable William G. Blackwood, presiding judge of said district court, in chancery sitting :

Humbly complaining, show unto your honor, your orator and oratrixes, Alfred Bent, Estefana Hicklin, and her husband Alexander Hicklins, and Teresa Bent, a minor, by her next friend, Ceran St. Vrain, of the county of Taos, Territory of New Mexico, that Charles Bent, of the county of Taos, deceased, the late father of your orator and oratrixes, Alfred Bent, Estefana Hicklin and Teresa 76 Bent, was in *her* lifetime the owner in right and equity, of the undivided one-third part of a certain "merced" or grant of lands made by the Mexican government, in or about the year 1843, in due form of law, to Guadalupe Miranda and Charles Beaubien, which said grant or "merced" of lands is situated, lying and being in the said county of Taos, on the rivers known as the Rayado, Ponie Vermejo, Cimarron Cito and Colorado, and known as the "Rayado grant;" and the said deceased being entitled to be seized as owner of the one undivided third part of the lands aforesaid, did depart this life the year 1844, leaving your orator and oratrixes coheirs and heiresses him surviving; and upon his death the said one undivided third part of said lands should have descended upon and should have come to your orator and oratrixes, the said Alfred Bent, Estefana Hicklin and Teresina Bent; and your orator and oratrixes further show unto your honor that though the name of our late deceased father, Charles Bent, does not appear as one of the grantees of the said "merced," yet it is a fact of common notoriety that the said grant was obtained from the late Mexican government mainly by his exertion, influence and instrumentality, and that the said Miranda and Beaubien, the grantees named in the documents of the grant or "merced" from the said Mexican government aforesaid, have never denied, but have confessed and acknowledged in the presence of numerous persons, that our father, and late Charles Bent, deceased, had equal right with the said — —

was fully and entirely with themselves equal owners in his lifetime of the one undivided third part of the said grant of land, and that such was the verbal understanding in all good faith between our deceased father and said grantees; and further your

77 orator and oratrixes show unto your honor that since the death of their late father, Charles Bent, they, the said grantees of the said tract of land granted as aforesaid, have confessed and acknowledged, in the presence of witnesses, the fact notoriously known that your orator and oratrixes, as the coheirs and heiresses of the said Charles Bent, deceased, are entitled to the one undivided third part, all of which your orator and oratrixes is prepared to verify by sufficient and competent testimony.

And your orator and oratrixes further show unto your honor that they have frequently applied to and requested the said Guadalupe Miranda and Charles Beaubien to join and concur with your orator and oratrixes in making a fair, just and equal partition of the said premises between them, the said defendants, Guadalupe Miranda and Charles Meaubien and others now holding under the same and wrongfully and to the injury of your orators and oratrixes, occupying to their own exclusive use the said lands hereinbefore described, that there should be a just and equitable division of one-third of said property to each the said Guadalupe Miranda and to the said Charles Beaubien and their respective assigns, and the other third to your orator and oratrixes to be allot-ed, held and enjoyed jointly by them. And your orator and oratrixes well hoped that the said Guadalupe Miranda and Charles Beaucien and their assigns would have complied with such, their reasonable request as in justice and equity it ought to have been.

But now so it is, may it please your honor, that the said Guadalupe Miranda and Charles Beaubien, combining and confederating to and with Lucien B. Maxwell, Joseph Pley, and with divers other

78 persons, at present unknown to your orators and oratrixes, whose names when discovered your orators and oratrixes pray they may be at liberty to insert herein with apt words to charge them as parties defendants hereto, as are hereby charged; the said Guadalupe Miranda, Charles Beaubien, Lucien B. Maxwell and Joseph Pley, and as contriving how to wrong and injure your orators and oratrixes in the premises. They, the said Guadalupe Miranda, Charles Beaubien and others herein made defendants, absolutely refuse to comply with such request, and they the said defendants at times pretended that your orators and oratrixes have no right to said one undivided third of said property or offer them with interest to defraud and wrong your orators and oratrixes, such parts of said grant of lands as they are comparatively valueless, in comparison to those parts of said lands now occupied and used for the sole behoof and benefit of the said defendants, regardless of the first rights of your orators and oratrixes. And as whereas your orators and oratrixes charge, and so the truth is, that a fair and just partition for said grant of land, according to the intent thereof, and according to equity, right and good conscience, will tend greatly to the benefit and advantage of your orators and oratrixes as well

as them, the said defendants, in defining what the rights of all the parties hereto actually are, but they the said defendants under divers, frivolous pretenses, absolutely refuse to join or concur with our orators and oratrixes therein.

All which actions, doings, pretenses and refusals are contrary to equity and good conscience, and tend to the manifest wrong and injury of your orator and oratrixes in the premises.

79 In consideration whereof, and forasmuch as your orator- and oratrixes can only have adequate relief in the premises in a court of equity, where matters of this nature are properly cognizable and relievable. To the end therefore that the said Guadalupe Miranda, Charles Beaubien, Lucien B. Maxwell and Joseph Pley, and other persons now unknown, when discovered, their confederates when discovered, may, upon their several and respective corporal oaths, to the best and utmost of their several and respective knowledge, remembrance; information and belief, true, direct and perfect answers make to all and singular the matters aforesaid; and that as fully and perfectly as — the same were here repeated, and they and every of them distinctly interrogated thereto, and more especially that the said confederates may, in manner aforesaid; answer and set forth whether the said orators and oratrixes have not a full and equitable one-third part or share — may be allotted and conveyed unto your orators and oratrixes, Alfred Bent, Estefana Hicklin and her husband, Alexander Hicklin, and Teresina Bent, a minor in charge to her first friend, Ceran St. Vrain, and their heirs and assigns.

That one other full and equitable third part or share may be allotted and conveyed to the said Guadalupe Miranda, his heirs and assigns, and a like equal one-third part to the said Charles Beaubien, his heirs and assigns, who are the defendants in this suit, and that your orators and oratrixes, Alfred Bent, Estefana Hicklin and her husband, Alexander Hicklin, and Teresa Bent, a minor, by her first friend, Ceran St. Vrain, may hold and enjoy their said joint allotment of one equal and full third part of

80 said premises according to the nature thereof, jointly, and that all proper and necessary conveyances and assurances may be executed for carrying such partition into effect, and that your orators and oratrixes may have such further or other relief in the premises as the nature of the circumstances of this case may require, and to your honor shall seem meet. And may it please your honor to grant to your orator- and oratrixes a writ of subpoena, to be directed to the said Guadalupe Miranda, a resident of Donna Ana county, Charles Beaubien, Lucien B. Maxwell and Joseph Pley, residents of the county of Taos, thereby commanding them on a certain day and under a certain pain therein to be limited, personally, to be and appear before your honorable court, and then and there full, true, direct and perfect answers make to all and singular the premises; and further to stand to, perform and abide such further order, direction and decree therein as to your honor shall seem meet and your orator- and oratrixes shall ever pray, etc.

SMITH & HOUGHTON, *Solicitors.*

The affiant, Alfred Bent, one of the complainants in the foregoing bill, on his oath, declares that the matters and things therein set forth, so far as they come within his own knowledge, are true; and that so far as he has been informed of the same by others, he believes them to be true.

ALFRED BENT.

Sworn and subscribed to before me this twelfth day of September, A. D. 1859.

[SEAL.]

JAMES BARRY, *Clerk*.

81 A general demurrer to this bill was interposed and over-ruled April 12th, 1860.

Afterwards, on May 8th, 1860, said complainants filed their amended bill as follows:

TERRITORY OF NEW MEXICO, }
Second Judicial District, County of Taos. }

District Court, April Term, 1860.

The amended bill of complaint of Alfred Bent, Estafana Hicklin, wife of Alexander Hicklin, and Alexander Hicklin, her husband, and Teresina Bent, by Ceran St. Brain, her next friend, all of the county and district aforesaid, against Charles Beaubien, a resident of said county of Taos, and Lucien B. Maxwell and Jose Pley, of the county of Mora, in said district, and Guadalupe Miranda, a resident of the county of Donna Ana, in the Territory aforesaid.

To the Honorable William G. Blackwood, presiding judge of said district court in chancery sitting:

Humbly complaining, your petitioners, Alfred Bent, Estafana Hicklin and Teresina Bent, by her next friend, Ceran St. Vrain and Alexander Hicklin, the husband of Estafana Hicklin, sheweth unto your honor that in or about the year A. D. one thousand eight hundred and forty-three, Guadalupe Miranda and Charles Beaubien, who are prayed to be made parties defendants to this bill of complaint, desired to obtain a grant of lands from the Mexican government, and applied to one Charles Bent, the natural father of your petitioners, Alfred Bent, Estefana Hicklin and Teresina Bent, for his aid and assistance and influence in obtaining for them said grant of lands, agreeing with the said Charles Bent that if the said Charles Bent would lend his aid, assistance and labor in and about the procuring said grant of lands from the Mexican govern-
82 ment, that they, the said Beaubien and Miranda would, in consideration thereof, give to him, the said Charles Bent, one undivided third interest in said lands when so obtained.

Your petitioners would further show unto your honor that, at the solicitation of the said Beaubien and Miranda, that said Charles

Bent did, in consideration of the proposition so made by the said defendants to him, lend his services, influence and means in and about the prosecuting the application of the said Beaubien and Miranda for a grant of lands from the Mexican government, and by the labor, services, means and influence of him, the said Charles Bent did, about the year aforesaid, to wit, 1843, obtained from the Mexican government a grant or merced of lands in due form of law, granting to the said Beaubien and Miranda a certain district of country situated in the district aforesaid and commonly called and known as the Rayado grant, a copy of which grant is hereto annexed, marked Exhibit "A," and prayed to be taken as a part of this bill, with leave to refer thereto as often as may be necessary.

Your petitioners would further show unto your honor that after said grant or merced was obtained, and the said Beaubien and Miranda were placed in possession thereof, they, the said Beaubien and Miranda, acknowledged the great services rendered them by the said Charles Bent, and also that the said Charles Bent had an equal interest in said grant of lands with themselves.

Your petitioners further show unto your honor that in the year A. D. one thousand eight hundred and forty-seven, the said Charles Bent departed this life leaving no legitimate descendants of his body, but leaving your petitioners, Alfred Bent, Estefana
83 Bent, who afterwards intermarried with Alexander Hicklin, and Teresina Bent, his natural children and heirs to his estate, and left no other heirs descendants of his body.

Your petitioners further show unto your honor that after the decease of the said Charles Bent, the said Beaubien and Miranda, contriving to deceive and defraud your petitioners of their rights as heirs-at-law of the said Charles Bent, and well knowing that your petitioners, Alfred Bent, Estefana Hicklin and Teresina Bent were the only rightful heirs to the interest of said Charles Bent, deceased, and well knowing that the said Charles Bent at the time of his death was rightfully entitled to an interest of one undivided third part of said grant or merced of lands when applied to by your petitioners as the legal heirs and descendants of said Charles Bent, to make an equitable division of said lands between them, the said Beaubien and Miranda, and your petitioners as the heirs of the said Charles Bent, deceased, each taking share and share alike; that is to say, the said Beaubien the one undivided third part, the said Miranda the one undivided third part, and your petitioners, Alfred Bent, Estefana Hicklin and Teresina Bent, one undivided third part among them as the heirs-at-law of said Chas. Bent, deceased, offered your petitioners such part of said grant only as to them were valueless, and comparatively so to your petitioners. The said Beaubien and Miranda still holding out inducements to your petitioners that they would make a fair and equitable division of said grant with them in accordance with the agreement made with the said Charles Bent deceased.

But so it is, may it please your honor, that as often as your petitioners have applied to the said Beaubien and Miranda for a fair and equitable division of said lands, they have acknowledge the

84 rights of your petitioners, but contriving to defraud your petitioners in the premises, have repeated to them the same offers, hoping thereby to induce your petitioners not to assert their rights in a court of equity.

Your petitioners further show that the said Bea-bien and Miranda, not regarding their obligation to the said Charles Bent, deceased, nor the right of your petitioners as the *one* heir- of said Bent, have sold to one Lucien B. Maxwell and Jose Pley, large tracts of land within the boundaries of said grant, who have taken possession thereof, and are now in the enjoyment of the same, regardless of the rights and interests of your petitioners, the said Lucien B. Maxwell and one Jose Pley are now combining and confederating with the said Beaubien and Miranda to defraud and cheat your petitioners out of their just right, and interests in said grant or merced of land.

Your petitioners therefore pray that the said Lucien B. Maxwell and Jose Pley may be made parties defendant to this their bill of complaint.

And now may it please your honor, that since your petitioners are not willing to accept from said Beaubien and Miranda, such parts of said grant of land as they are willing to give them in satisfaction of their interest as heirs of law of the said Charles Bent, deceased, wholly and entirely refuse to make any partition of said lands with your petitioners, all of which pretences and refusals are contrary to equity and good conscience, and tending to the manifest wrong and injury of your petitioners in the premises.

In consideration whereof, and forasmuch as your petitioners can have adequate relief in a court of equity only; therefore that the said Charles Beaubien Guadalupe Miranda, Lucien B. Maxwell and Jose Pley and all other persons, their confederates when discovered, may upon their respective corporal oaths, full, true and correct answers make unto all and singular the allegations in this bills contained, and upon the premises being found true, and that

85 your petitioners are justly entitled to one undivided third part of said grant, that an account may be taken of all the rents and profits of said lands under the direction of this honorable court, and that a just and equitable partition of all the lands in said grant or merced, be made between the parties interested therein, and that your honor appoint a commissioner to convey the one undivided third part of said lands to which your petitioners may be entitled as well in value and interest as in quantity to them. And that this honorable court may decree to your petitioners according to their respective rights, their said portion or interest in and to said grant or merced, and to their heirs in fee-simple forever, and that your honor will grant such other and further relief as in equity and in good conscience your petitioners may be entitled to, and your petitioners will ever pray, etc.

ASHURST & TOMPKINS,

Solicitors for Complainants.

86 After demurrers had been interposed and overruled the defendants answered the bill. Miranda's answer was made May 15th, 1860, as follows:

And be it further remembered, that with the papers filed in this cause, as found, the following paper, purporting to be an answer of the defendant, Guadalupe Miranda, to the bill of complaint herein, which answer is in the words and figures following, to wit:

TERRITORY OF NEW MEXICO, }
County of Taos. }

In the District Court, September Term, A. D. 1860.

ALFRED BENT *et al.*, Heirs of Charles Bent, } Bill in Chancery for
vs. } Partition, etc.
CHARLES BEAUBIEN *et al.*

The answer and disclaimer of Guadalupe Miranda, one of the defendants, to the bill of complaint of Alfred Bent and others against Charles Beaubien, Guadalupe Miranda, and others.

87 This defendant saving and reserving to himself, now and at all times hereafter, all manner of advantage and benefit of exception, and otherwise that can or may be had and taken to the many untruths, uncertainties, and imperfections in the said complainants' bill of complaint contained for answer thereto, or unto so much or such part thereof as is material for this defendant to make answer unto, he answers and says that it is true, as charged in plaintiffs' bill, that the sitio of land as described in plaintiffs' bill was granted unto the said Beaubien and himself, as therein alleged, and knows that said Beaubien expressed a desire to invite Charles Bent, deceased, to participate in said grant, or sitio, but knows of no further interest or connection which the said Bent ever had in and to said grant and sitio.

This respondent further saith that he hath heretofore for a consideration, greatly under the value of his original and real interest in and to said grant or sitio sold and transferred by a quitclaim deed, all of his said right, title and interest to Lucien B. Maxwell, one of the defendants in said bill, and therefore saith that he doth fully and absolutely disclaim all manner of right, title and interest, whatsoever in and to said grant or sitio in said bill described and in and to every part thereof, and this respondent doth deny all and all manner of unlawful and fraudulent combination and confederacy, unjustly charged against him in and by the said bill of complaint without that any other matter or thing in said bill contained material or necessary for this defendant to make answer unto and not herein well and sufficiently answered unto, confessed or avoided, traversed and denied, is true, all which matters and things

88 this respondent is ready to aver, maintain, and prove as this honorable court shall award, and humbly prays to be hence dismissed with his reasonable costs and charges in this behalf most wrongfully sustained.

S. M. BAIRD,
Attorney for the Defendant Miranda.

Guadalupe Miranda maketh oath and saith that the matters and things in the foregoing answer are true.

GUADALUPE MIRANDA.

Sworn to and subscribed before me this — day of March, A. D. 1860.

Sworn to and subscribed before me this 15th day of May, 1860.

SAMUEL ELLISON, *Clerk*.

89 Beaubien's answer was made September 6th, 1860, as follows:

Copy of Answer of Charles Beaubien to Foregoing Bill.

UNITED STATES OF AMERICA, }
Territory of New Mexico, County of Taos, }⁸⁸:

In the District Court for the Second Judicial District in said Territory Held for said County, at September Term, A. D. 1860.

90 ALFRED BENT and Others }
vs. } Chancery.
CHARLES BEAUBIEN and Others. }

And the said Charles Beaubien, saving and reserving to himself all and all manner of exception to the manifold errors, imperfections and uncertainties in the plaintiffs' bill contained for answer thereto, or so much thereof as he is advised, it is sufficient for him to answer, answering, says, that it is true as stated in said petition that the tract of land therein described was granted to said Beaubien and Miranda by the Mexican government at the time mentioned in said bill of complaint, but it is not true that it was obtained by means of the influence of said Charles Bent, nor did he or said Miranda, to his knowledge, ever solicit or apply to said Charles Bent for the use of his influence for the purpose of obtaining the grant aforesaid nor did the said Charles Beaubien or Guadalupe Miranda ever offer to said Charles Bent to give him any portion of said land so granted, in consideration of the aid or influence of said Charles Bent in obtaining the said grant. That the said grant was obtained chiefly by means of the influence of said Miranda, then secretary of the Territory and residing at Santa Fé, a Mexican of intelligence and wealth, and at that time on terms of great friendship and confidence with the Mexican government of the Territory, and also as this respondent believes for the reasons set forth in the petition and stated by the governor in making the donation, as by reference to exhibits filed with plaintiffs' bill will more fully appear; whereas the said Charles Bent was then and up to the time of his death, a citizen of the United States and resided far from the capital, with few opportunities for intercourse with said Mexican government. That at this time a very warm and cordial friendship existed between the said Charles Bent and this respondent, and this respondent thinks it probable

91

that said Charles Bent may have conversed with the Mexican government in favor of granting him his said claim, but whether he did so or not this respondent does not know. That while his petition was pending before the Mexican government for the grant of land mentioned in said bill, he conversed frequently with said Charles Bent upon the subject, and in one of these conversations told said Charles Bent that if he obtained said grant, he would make him a present of one-fourth part thereof, but did not then state in what part of said tract, nor that it should be an undivided third or fourth part, nor did he so state at any time or in any other conversation with Charles Bent. Neither did said Charles Beaubien or said Miranda, to his knowledge, after said grant was obtained, and they were placed in possession thereof, acknowledge the services of said Charles Bent in the premises or that he had an equal interest with them in said claim. That said Charles Bent did at the time mentioned in said bill of complaint and from the time of the granting of said land up to the time of the death of said Charles Bent, this respondent did not offer nor did said Charles Bent request of this respondent that he would carry into effect the verbal promise aforesaid, by designating the fourth part which this respondent had promised to give to said Charles Bent. That after the death of said Charles Bent this respondent's kind feeling for him and regard for his children, induced in him a desire to benefit them, and knowing them to be his natural children and believing them not to be heirs-at-law to their said father upon that account believing also that by donating the same to said plaintiff, he would be carrying out what he thought would be the wishes of their deceased father; he laid off and designated and offered to donate to said complainants the one-fourth of said tract, at a point at which he considered valuable, but his offer was met by them with a refusal and a claim on their part of one undivided third portion of said tract as a matter of right, which this respondent refused to consider.

Your respondent further states that at the time said grant was made to your respondent and said Miranda, the same was an uncultivated wilderness, surrounded by hostile Indians and for this reason utterly uninhabitable, but that since then it has slowly and gradually become valuable, and this increased value has been caused chiefly by the labor and capital and diligence of this respondent and the defendant, Lucien B. Maxwell, to whom said defendant, Beaubien, had sold a portion of said land, and of other tenants and purchasers under said Maxwell, during the period of years and under circumstances of danger, risk and exposure which few would have undertaken for the original value of said land. And this defendant, Beaubien, here states that he, the said Beaubien, and said defendant Maxwell, Jose Pley and others, tenants and purchasers as aforesaid, have expended on said tract of land in labor and capital as aforesaid an amount not less than twelve thousand dollars, and also that said defendants, Beaubien and Miranda, have expended in the defense of the lawsuit referred to in exhibit to complainants' bill, as also remunerating the services of counsel before the surveyor of said Terri-

93 tory, in procuring the approval of said claim, the further sum of two hundred dollars, in all of which expenditures of money, capital and labor so paid out and expended by said defendants Beaubien, Maxwell and others, neither the said complainants nor their said father have ever shared or offered to share, although the same were matters of public notoriety, and this respondent never promised during this long period of time that his kindly and friendly disposition toward said complainants, and their said father was to be repaid by making use of it as a pretext to urge a claim so evidently inequitable and unjust. This respondent also denies all fraud, collusion, confederacy or combination with intent to defraud said complainants of their rights, so unjustly charged upon him in said bill of complaint, without this that any other matter or thing in said bill contained material or necessary for this defendant to answer and not herein well and sufficiently answered, confessed, avoid-, traversed or denied is true, all which matters and things this respondent is ready to aver, maintain or prove, as this honorable court may direct, and humbly — to be dismissed with his reasonable costs and charges by him in his behalf most wrongfully sustained, and will ever pray.

BAIRD & WHEATON,
Solicitors for Defendant Beaubien.

TERRITORY OF NEW MEXICO, }
County of Taos, } ss.:

Charles Beaubien, having been duly sworn, states that the matters and things set forth and contained in the above answer, as derived from his own knowledge, are true, and those stated as derived from the knowledge of others he believes to be true.

CHARLES BEAUBIEN.

94 Sworn to and subscribed to before me, this 6th day of September, A. D. 1860.

WILLIAM G. BLACKWOOD, *Judge.*

UNITED STATES OF AMERICA, }
Territory of New Mexico. }

I, William Breeden, clerk of the first judicial district court of said Territory, do hereby certify that the above and foregoing is a true and perfect copy of the original paper on file in my office.

Witness my hand and the seal of said court this 11th day of May A. D. 1872.

[Seal Jud. Dist. Court, N. M.]

W. M. BREEDEN, *Clerk.*

Copy of Answer of Lucien B. Maxwell.

UNITED STATES OF AMERICA, }
 Territory of New Mexico, County of Taos, } ss :

In the District Court for the Second Judicial District, Held for said County, at September Term, 1860.

ALFRED BENT *et als.* }
vs. } Chancery.
 CHARLES BEAUBIEN *et als.* }

The defendant Lucien B. Maxwell, saving and reserving to himself all, and all manner of benefit of exception that can or may be taken to the manifold errors, uncertainties and imperfections in plaintiffs' bill contained for answer, thereto or to so much thereof as he is advised is sufficient to answer, answering says: That
 95 it is true as therein alleged that the tract of land therein described was granted to said Beaubien and Miranda by the Mexican government; that it is also true that he now occupies a portion of said land as stated in said bill, and that he occupies it by reason of a purchase made of a portion of the claim of said Charles Beaubien, shortly after the making of said grant and also of a purchase made by him, the said Maxwell, of the whole claim of said Miranda at a more recent period, which will appear more fully by the deeds made by said Beaubien and Miranda to said Maxwell, prayed to be made a part of this answer and be produced whenever they may be hereafter required; that he purchased the same in good faith and for a valuable consideration and has since sold a portion of the same to defendant, Joseph Pley, also for a valuable consideration; that he knows nothing of any contract or agreement between said Beaubien and Miranda and said Charles Bent, such as set forth in said bill, nor does he know of any transactions between said Charles Bent and said Beaubien and Miranda of the character mentioned in said bill of complaint, nor by what influences said grant was obtained by said Beaubien and Miranda from the Mexican government; that he has no other or further claim to said land other than stated in this answer. He also denies all fraud or conclusion or combination or confederation as charged upon him in said bill of complaint, without this that any other matter or thing in said bill contained material or necessary for this defendant to answer, and not herein well and sufficiently answered, confessed, avoided, traversed or denied is true. All which matters and things this respondent is ready to aver, maintain or prove as
 this honorable court shall direct, and humbly prays to be
 96 hence dismissed with his reasonable costs and charges by him in this behalf most wrongfully sustained, and will ever pray, etc.

WHEATON.
For Respondent Maxwell.

TERRITORY OF NEW MEXICO, }
County of Taos, } ss:

Lucien B. Maxwell makes oath and say-, that the matter and things above, in his answer set forth and contained, are true.

L. B. MAXWELL.

Subscribed and sworn to before me, this 4th day of September, A. D. 1860.

WM. G. BLACKWOOD,
*Judge of the Second Judicial District of the
Territory of New Mexico.*

Joseph Pley's answer was made April 7th, 1860, as follows :

Copy of Answer of Joseph Pley.

ALFRED BENT and Others }
vs. } Chancery.
CHARLES BEAUBIEN and Others. }

97 In the District Court for the Second Judicial District in the Territory of New Mexico, for the County of Taos.

And the said Joseph Pley, saving and reserving to himself all and all manner of right of exception to the manifold errors, imperfections and inconsistencies in the complainants' bill contained for answer thereto, or so much thereof as he has been advised, it is sufficient for him to answer answering, says:

That about the month of June, in the year of our Lord one thousand eight hundred and fifty-nine, he purchased of Lucien B. Maxwell, a portion of the land alluded to and set forth in complainants' bill, including a large part of the land on the River Rayado, bounded as follows: that he purchased the same of said Maxwell in good faith, for a valuable consideration, to wit: the sum of seven thousand dollars, and upon the payment thereof, took possession of the land so purchased, and now resides thereon.

That he knows nothing of the claim of said complainants at the time of said purchase and up to the present time, except as he is informed by the allegations in said bill of complaint. He denies all fraud combination or confederacy as set forth in said bill, and denies all knowledge of the matters and things in said bill contained. Prays to be dismissed with his reasonable costs by him in this behalf most wrongfully sustained.

JOSEPH PLEY.

Sworn to and subscribed before me this seventh day of April, 1860.

WM. G. BLACKWOOD, *Judge.*

98 Replications to these several answers were duly filed, and the cause came to hearing in 1865. No evidence appears in the record, but the decree which follows recites that the cause was

heard upon the pleadings and testimony on file as taken in the cause, the files in said cause having been lost or misplaced, and only the pleadings having been found after the filing of the Maxwell Company's bill in 1870. On June 3rd, 1865, an interlocutory decree was made and entered of record in said cause as follows:

United States District Court, County of Taos, September Term, 1,-1865.

ALFRED BENT, ESTEFANA HICKLIN and ALEX-
ander Hicklin, Her Husband; Teresina
Bent, Alias Teresa T. Bent, and Aloys
Scheurick, Her Husband, and also by Her
Next Friend, Ceran St. Vrain,

vs.

GUADALUPE MIRANDA, JOSEPH PCEY, LUZ
Beaubien and Lucien B. Maxwell, Her
Husband, and the said Maxwell; Leonor
Beaubien, Petra Beaubien and Jesus G.
Abreu, Her Husband; Teodora Beaubien
and Frederick Miller, Her Husband; Juana
Beaubien and Joseph Clothier, Her Hus-
band, and Pablo Beaubien, Minor, and the
said Frederick Miller, His Guardian, and
Vidal Trujillo, the Husband of the said
Leonor Beaubien, Defendants.

Bill in Chancery for
Partition of Real
Estate.

And now on this day came the parties by their counsel, and this cause having been at a former term of this court heard upon the bill and amended bill, and the answer thereto, the supplemental bill and the answer, and the testimony herein on file, as taken in this cause, which cause was taken under advisement by the court as to the decree which should be made in the premises, and the court being fully advised, in consideration thereof, therefore, it is ordered, adjudged and decreed by the court that the said complainants, Alfred

99 Bent, Estefana Hicklin, and Teresina, otherwise Teresa T. Bent, be and are hereby declared to be the natural son and daughters of the said Charles Bent in the said bill mentioned, by him begotten upon and conceived and borne of Ygnacio Jamarillo, within the Territory of New Mexico, formerly the department or province of New Mexico, and at the time the said Alfred, Estefana and Teresa were begotten and conceived, no lawful impediment existed to prevent the said Charles Bent and Ygnacio Jamarillo from in due form of law solemnizing a contract of marriage, the one with the other; that as such natural children the said Alfred, Estefana and Teresa, in the absence of any child or heir born in wedlock to the said Charles Bent, became and were at the time of his decease the true and lawful heirs of his body in this Territory, with the full power, right and authority to inherit, succeed to and receive the estate, property, rights and interests of property of the said Charles Bent in the said Territory, and that as such

children and heirs they are justly and lawfully entitled to have, maintain, receive, possess and enjoy all the rights, interest and estate which in law or equity belonged or pertained to the said Charles Bent at the time of his decease, of, in or to the lands, real estate or grant as described and set forth in the complainants' bill and the exhibit therein referred to, which description is as follows, to wit: Commencing below the junction of the Ryado river with the Colorado, thence in a direct line to the east to the first hills, and from thence running parallel with said Colorado river to the north, to a point in front of the junction of the Una de Gato with the said Colorado river, thence following said hills to the east of the said river of the Una de Gato, to the summit of the mesa, thence turning to the northeast along said summit, to the summit of the mountain that separates the waters that flow to the east from those that flow to the west, and from thence following the said mountain to the south of the first ceja, south of the Ryado river, and from thence following the summit of said ceja, east to the place of beginning.

100 It is further ordered, adjudged and decreed that the said Charles Bent at the time of his decease was justly and equitably entitled and seized of one undivided fourth part of the estate in and to the said tract of land, real estate or grant, and that the said Charles Beaubien and Guadalupe Miranda were at said time so entitled and seized of an equal undivided share of the remaining three-fourths of the said tract or grant.

Furthermore, that the said Alfred, Estefana, and Teresina (alias Teresa T.), upon the decease of their said father, inherited succeeded to and became seized of the said undivided one-fourth part interest and estate which belonged or pertained to the said Charles Bent in law and equity, in and to the land or real estate in the entire tract or grant aforesaid, at the time of his decease, and that the said Alfred Bent, Estefana and Teresina, are now fully and absolutely entitled to and seized of the undivided one-fourth part of the interest and estate of the said tract of land or grant.

Furthermore, that the said undivided one-fourth part in and to the said tract or grant of land or real estate be and hereby is declared established and confirmed to them, the said Alfred, Estefana and Teresina (alias Teresa T.) and to their heirs and assigns forever, with the full and perfect right, powers and authority to possess and enjoy the same.

It is further ordered, adjudged and decreed that a just and equitable partition be made of the said tract of land or grant between the said Alfred, Estefana and Teresina, and the said daughters and son of the said Charles Beaubien deceased, defendants herein, and Lucien B. Maxwell, the assignee and grantee of the said Guadalupe Miranda, according to the rights, interests and estate hereinabove declared between the respective parties.

101 Furthermore, that the special commissioners hereinafter appointed to make and allot the said partition shall first take and subscribe an oath before the judge or the clerk of this court, the clerk of the probate — for the county of Mora, or the justice of the

peace within and for the precinct including the county-seat of said county to well and faithfully, without partiality, prejudicial favor or ill will, to the best of their knowledge, understanding, skill and abilities, make a partition and allotment of the said tract of land or grant, between the parties and in the manner or form prescribed and required in this decree, and the said oath so taken and subscribed shall be duly certified by the officer administering the same and by the commissioners, annexed to and returned with the report by them to be made to this court.

That when the oaths shall be so taken and subscribed, the said commissioners shall jointly proceed in person upon the said tract or grant and without any unnecessary delay, and shall inspect the same throughout its extent and especially the streams and springs of water and their capacities, one year with another to supply water for the purpose of irrigating the lands connected with or contiguous to the said streams, susceptible of cultivation and irrigation; the mines and minerals of whatsoever description; the quarries of rock or stones; timber for building, fencing and firewoods; the lands suitable for plowing, planting and sowing; and grounds and — for pasturage.

They shall then make a partition of the said tract or grant, according to quantities, quality and value, and designate and describe the tracts or partitions divided by such descriptions, and natural and artificial objects, or marks or boundaries as shall remain plain and permanent and easily found. They shall part and lay off one-fourth part of the said tract or grant and divide, part and lay off the remaining three-fourths of the same into two equal parts.

102 In making the said partition of one-fourth and of the said three-fourths, regard shall be had to the buildings, acequias, cultivation and improvements made by the said Lucien B. Maxwell, upon the said tract or grant of land and nothing shall be credited to the other parties or charged and considered against the said Maxwell for any buildings, acequias, cultivation or improvements made and added to the said grant or tract of land by him or by persons holding and possessing by or through him in good faith. This shall have especial reference to the commencement of this suit upon the twelfth day of September, one thousand eight hundred and fifty-nine, and to the principal places and portions then occupied and improved by him and those by or under him. That in making and allotting the parts therein decreed, ordered and adjudged to be partitioned, the portions which shall be portioned and allotted to the said Maxwell shall include the portions of said tract or grant, which the said Maxwell, or those under or through him, occupied and had cultivated and improved before the commencement of the suit and since continued to occupy and improve, and the chief and principal portions, the said Maxwell has occupied and improved since the commencement of this suit.

In case the said Maxwell since the commencement of this suit has by himself or others in parts of said tract or grant remote from the principal farms and improvements actually occupied by him, made slight or temporary cultivation or improvements, which shall in-

elude the lands and waters in such manner as to leave not an equitable and just portion of the waters and cultivatable land to be parted to the other parties in this cause, then and in such case, the said remote land and waters included in such improvements or slight cultivations, shall in the partition to be made in this cause be considered and included in the said partition, the same as if the

103 said improvements were not made upon the said lands. In such case the commissioners shall assess the just and true value of the land covered by such improvements without their being added to the said lands, and also the said improvements by themselves exceeding the just and true value of them over and connected with the said lands and report the facts with their general report to this court, carefully noting the different assessed values, so that the court may decree justly and equitably concerning the same between the parties.

Furthermore, when the commissioners shall have parted the tract or grant of land as herein provided, they shall allot the one-fourth part to the said Alfred, Estefana and Teresa, (alias Teresa T.) Bent, and an equal portion of the said three-fourths, the one to the said Lucien B. Maxwell, and the other to the said son and daughters of the said Charles Beaubien, deceased.

In estimating the value of any improvements referred to herein, as made in certain remote places, and under the circumstances specified, the commissioners will also assess and report the value of the rents and profits since such places have been occupied and cultivated.

In parting and allotting to the said Maxwell the portion to be allotted to him, the said commissioners are hereby specially charged to estimate in the partition the lands which include the buildings, acequias, farms and other improvements by him made, or by others through or under him, in good faith, without reference to the value of any of the said improvements, that this provision does not extend to the aforesaid remote places and the improvements hereinbefore specially specified as connected therewith.

It is further ordered, adjudged and decreed that Lucien Stewart, of Taos county, and Vicente Romero and William Kroenig, of the county of Mora, in said Territory, be and they hereby are

104 appointed to execute and perform all the requirements and provisions of this decree, required of and to be done by commissioners, and that they make full, plain and exact report of their proceedings to the next term of this court.

Furthermore, it is ordered, adjudged and decreed that the said complainants pay to the said defendants, Maxwell and the said daughters and son of the said deceased Charles Beaubien, the sum of one hundred dollars, the one-fourth part of the amount expended towards the procuring of the confirmation of the said tract or grant of land by the Government of the United States.

The court now reserves and suspend-making its decree as — the partition and payment of the costs in this cause, until a future term of the court:

It appearing to the satisfaction of this court, upon the suggestion

of the complainants, that since the last term of this court, Leonor Beaubien has been regularly and lawfully divorced from the bonds of matrimony before existing between her and the said Vidal Trujillo, it is ordered by the court that he be and hereby is dismissed from these proceedings, and that the clerk furnish a copy of this decree to the said Maxwell and also to the commissioners, and one for the said son and daughters, should these latter require the same, and that this cause stand continued until the next term of this court.

Signed June 3, 1865.

KIRBY BENEDICT,
Chief Justice.

105 The heirs of Beaubien appear as parties defendant in this decree, Beaubien having died in 1864.

The commissioners appointed by the foregoing decree never acted. Maxwell declared that he would appeal the cause, and, if necessary, carry it to the Supreme Court of the United States. Afterwards the Bent heirs, complainants in said suit, entered into negotiations with Maxwell for a compromise of the litigation on the basis of Maxwell paying them a money consideration to relinquish their claim. It was understood between Alfred Bent and Sheurick, with the consent of their wives and Mrs. Hicklin, that either Alfred Bent or Sheurick or both of them should act in the matter as agents to sell Maxwell, if they could, their interests in the grant for the best price they could get, but never less than \$21,000, or what Beaubien's heirs got. Over-

tures for compromise were made by Alfred Bent, acting for
106 himself and his co-complainants, his two sisters and their husbands, in September or October, 1865, when he went to Maxwell's residence, at Cimarron, to try and make a sale of their interest. These were made with the approval of Judge Houghton, one of their counsel, whom Bent consulted about it, and who told Bent he had better settle for himself and the other heirs by compromise rather than to take the award of the commissioners. Bent demanded \$21,000; Maxwell offered \$18,000. Bent returned to Taos, where his family resided, without having affected a definite agreement with Maxwell as to price. The Bents considered the sale as good as made, but Alfred Bent said to his co-complainants that they could get a few thousand more by being quiet a few days, insisting, however, on having as much as the Beaubien heirs got; they then expected to close the bargain in a few days; were ready to make the deeds as soon as the matter was settled, and the deeds had already been written out by Sheurich, husband of Teresina Bent. Before anything further was done in the matter of the proposed compromise Alfred Bent died, in December, 1865, leaving surviving him his widow, Guadalupe Bent, and three infant children, viz., Charles, Julian, and Alberto Silas, aged respectively six, four, and one year, and on April 12th, 1866, said Guadalupe was appointed by the probate court of Taos county administratrix of the estate of Alfred Bent, and duly qualified as such. A few hours before said Bent was shot, on December 3rd, 1865, he directed one of

the commissioners appointed to make partition to proceed therewith as soon as possible, saying he considered his interest and that of his sisters worth \$150,000.

107 Alfred Bent left a will, which was duly probated, which said will and the record of probate thereof and of the inventory and other proceedings connected with said estate are in words and figures following:

Petition of Guadalupe Bent for Appointment as Administratrix.

To the Honorable Pedro Sanchez, probate judge of the county of Taos, Territory of New Mexico:

108 Your petitioner Guadalupe Bent before your honor respectfully represents that on the — day of the month of — A. D. 1865, my deceased husband Alfred Bent made and executed a testament and last will, as in it expressed, I as his wife which I was, am therein named by him as administratrix and executrix of his hereditary goods, in due course of law I appear before you- honor in order that you may be pleased to order that letters of administration of the estate of my husband according to the form of the statute for such cases made and provided offering to execute the necessary and sufficient bonds required by law, and your petitioner will ever pray, etc.

County of Taos, April 12, 1866.

her
GUADALUPE x BENT.
sign.

TERRITORY OF NEW MEXICO, }
County of Taos. }

I Ynocencio Martinez clerk of the court of probate in and for the county of Taos and Territory of New Mexico, do hereby certify that the foregoing part of one page contains a full true perfect and correct copy of the entire and full petition of Guadalupe Bent to the Hon. Pedro Sanchez then judge of probate for said county for letters of administration on the estate of her deceased husband Alfred Bent which said petition now remains on file and on record in the office of said clerk of said court of probate.

In testimony whereof I have hereunto set my hand and 109 affixed the seal of said court of probate within and for the county of Taos this the — day of December, A. D. 1872.

[SEAL.] YNOCENCIO MARTINEZ, Clerk.

Oath of Guadalupe Bent, Administratrix.

TERRITORY OF NEW MEXICO, }
County of Taos, }

Before me the undersigned clerk of the probate court in and for said county personally appeared Guadalupe Bent and under oath declared that Charles Bent, Julian Bent, and Alberto Silas Bent

are the only children of the deceased Alfred Bent her husband late of this county; that she as lawful administratrix of the estate of her said deceased husband would make a true and perfect inventory of all and each of the goods, real property, chattels, animals, debts, rights and claims; pay all the debts of said estate if any should appear; that she would render full account to the probate court whenever she may be so required relative to the management of the administration of said estate; that she would make an equal distribution of the same among the respective legitimate heirs as she may be required, and that in general she would discharge in all things her legal duty as administratrix of the estate until the conclusion of such administration.

her
GUADALUPE (x) BENT.
sign.

Sworn to and subscribed before me, this 12th day of April, A. D. 1866.

YNOCENCIO MARTINEZ,
Clerk of the Probate Court.

[SEAL.]

110 TERRITORY OF NEW MEXICO, }
County of Taos. }

I, Ynocencio Martinez, clerk of the court of probate within and for the county of Taos and Territory of New Mexico, do hereby certify that the foregoing part of one page of writing is a full, complete, correct and perfect copy of the original oath of administration of Guadalupe Bent as administratrix of the estate of Alfred Bent, deceased, taken in full and complete from the said original which remains on file and of record in the office of the said clerk of the court of probate.

In testimony whereof I have hereunto set my hand and affixed the seal of said court of probate this the — day of December, A. D. 1872.

[SEAL.]

YNOCENCIO MARTINEZ, *Clerk.*

Probate of Will of Alfred Bent.

DON FERNANDO DE TAOS, N. M.,
WEDNESDAY, the 6th Day of March, 1867.

At ten o'clock in the forenoon the court met.

Present: The Hon. Pedro Sanches, judge of probate; Leandro Martinez, clerk, and Pablo Martinez, deputy sheriff.

The order of business is as follows:

The administrators of the estate of Alfred Bent, deceased, presented the will of said deceased for approval. The court examined said will and the witnesses in it mentioned, and finding it correct according to law, approved it and ordered that it be recorded in this office.

111 TERRITORY OF NEW MEXICO, }
County of Taos, } ss :

I, the undersigned, J. U. Shade, clerk of the probate court of said county, do hereby certify that the above is a true and perfect copy from the record of the proceedings of said court at the March term thereof, 1867, as the same appears in Book C, No. 2, of the records of the said court, on page 253.

Witness my hand and the seal of said court this 3rd day of October, 1884.

[SEAL.]

J. U. SHADE, *Clerk.*

Will of Alfred Bent, Deceased.

In the name of God Amen.

I Alfred Bent, being of sound mind and memory, and knowing the uncertainty of life and the certainty of death do hereby devise and decree as my last will and testament, in the presence of the subscribing witnesses, as follows to wit: first, I give and bequeath unto my wife Guadalupe Long Bent; for the maintainance of her and my three children Charles, William and Silas Bent, all of my real and personal property—money goods and effects after my just debts have been paid which are as follows to wit—to North and Scott of St. Louis the sum of five hundred and sixty-nine dollars with interest; to Mrs. S. Beuthner and L. B. Maxwell sixty dollars—to David Webster the sum of four dollars; which debts I desire shall be paid. I desire that my said wife shall be my executor and may join with her if necessary any person who may desire for her benefit and that of my children heirs as aforesaid.

112 In testimony whereof I have this 9th day of December,

A. D. 1865, subscribed my name in the presence of subscribing witnesses.

Witnesses :

Codicil—The debt due North and Scott of the city of St. Louis is jointly due by myself and Horatio Long of Colorado Territory.

(Signed)

ALFRED BENT.

FERNANDO MAXWELL.

W. A. NITTERIDGE.

JOS. S. HURT.

CHARLES HART.

Inventory of the Estate of Alfred Bent, Deceased.

Inventory which contains the goods of the deceased Alfred Bent, late of the county of Taos, commenced this 6th day of March, A. D. 1867.

Half of house, six rooms (at the rancho).....	\$300 00
200 varas of tillable land.....	200 00
27 cows at 20 dollars.....	540 00
9—388	

8 steers at 20 dollars..... ^s	160 00
90 fanegas wheat at \$2.00 dollars....	180 00
14 fanegas of corn at \$2.00.....	28 00
Money	500 00
By note of Lucien B. Maxwell.....	5,000 00
The eighteenth part of twenty-one miles square of land situated in the Territory of Colorado on the Las Animas river, Huerfano and other small streams, under our oath and having investigated the con- 113 dition and situation of said land we value it a little more or less at five thousand dollars.....	
	5,000 00
Total amount.....	\$11,908 00

This inventory was finished this 6th day of March A. D. 1867.

GUADALUPE THOMPSON *Née* LONG,

Administratrix.

YNOCENCIO MARTINEZ AND

JUAN B. LA ROUX, *Appraisers.*

This inventory has been examined and approved this 6th day of March, 1867.

PEDRO SANCHES,

Probate Judge.

TERRITORY OF NEW MEXICO, } ss:
County of Taos,

I certify that the foregoing are true and exact copies of the will and inventory of the estate of Alfred Bent, deceased.

In witness whereof, I have hereunto set my name and the seal of the probate court, this 6th day of March, 1867.

LEANDRO MARTINEZ,

Clerk of the Probate Court.

[SEAL.]

TERRITORY OF NEW MEXICO, } ss:
County of Taos,

114 I, the undersigned J. U. Shade clerk of the probate court of said county hereby certify that the foregoing three pages and five lines contain a full true and perfect copy of the will of Alfred Bent and of the inventory of his estate as the same appears of record in my office in Book B, No. 4, of Records of Wills and Administrations on pages 216 and 217.

Witness my hand and seal of said court this 3rd day of October, 1884.

[SEAL.]

J. U. SHADE, *Clerk.*

Allowance of Account Against Estate of Alfred Bent.

To Guadalupe Thompson, administratrix of Alfred C. Bent, late of the town of El Rancho, in the county of Taos and Territory of New Mexico, deceased:

Take notice that on the first day of the next ensuing term of the court of probate within and for the county of Taos aforesaid I shall

present for allowance against the estate of Alfred C. Bent, deceased a claim for the sum of one thousand seven hundred and ninety dollars, founded on account of which the following is a copy :

TRINIDAD, C. T., Oct. 25, 1867.

Estate of Alfred Bent, dec'd, to Horatio Long, Dr.

1867. To cash had and received \$1,790 00

(Signed)

HORATIO LONG.

TERRITORY OF COLORADO, }
County of Las Animas, } ss :

115 I the undersigned administratrix of the estate of Alfred C. Bent deceased hereby acknowledge service of foregoing notice of demand against the said estate this twenty-fifth day of October, A. D. 1867.

(Signed)

GUADALUPE THOMPSON,

Administratrix of the Estate of Alfred C. Bent, Deceased.

JOSE MA. MARTINEZ.

TERRITORY OF COLORADO, }
County of Las Animas, } ss :

This day personally appeared before me the undersigned a United States commissioner within and for the third judicial district of the Territory of Colorado aforesaid, Horatio Long, and being duly sworn on his oath according to law says that — the best of his knowledge and belief he has given credits to the estate of Alfred C. Bent, deceased, for all payments or offsets to which it is entitled and that the balance there claimed is justly due.

(Signed)

HORATIO LONG.

Sworn to and subscribed before me, this 25th day of October, A. D. 1867.

A. W. ARCHIBALD,

United States Commissioner in and for the Third

Judicial District of the Territory of Colorado.

TERRITORY OF COLORADO, }
County of Las Animas, } ss :

I, the undersigned, administratrix of the estate of Alfred C. Bent, deceased, hereby certify that within my own personal knowledge the foregoing demand of Horatio Long is true in all its particulars, and that the sum of one thousand and seven hundred and ninety dollars is justly due, and I hereby consent to the allowance of a judgment for the same without the necessity for my personal appearance in the said court of probate.

116

Witness my hand hereunto set this 25th day of ^eOctober, A. D. 1867.

(Signed) GUADALUPE THOMPSON,
*Administratrix of All and Singular the Goods and Chattels,
Rights and Credits that were of Alfred C. Bent, Deceased.*

Witness:

JOSE MA. MARTINEZ.

TERRITORY OF NEW MEXICO, { ss :
County of Taos,

Be it remembered that George Thompson being duly sworn in open court on this 5th day of November, A. D. 1867, on his oath says that he knows the foregoing affidavits, and other parts of the above proceedings were had as recorded; that he personally knows the parties thereto; and was personally present at the execution of the same; and that the same are true in all particulars as above stated.

G. W. THOMPSON.

Sworn to and subscribed in open court at our November term, A. D. 1867.

JUAN SANTISTEVAN,
Probate Judge.

Examined and approved this 5th day of November, A. D. 1867.

JUAN SANTISTEVAN,
Probate Judge.

117 The said will and foregoing record of proceedings in the probate court of Taos county, New Mexico, were not introduced in evidence in the present litigation until at the close of the testimony taken under the Maxwell Company's amended bill and the Bent heirs' bill, in 1866, and after the case of Thompson vs. Maxwell, 3 N. M., 269, had been decided by the supreme court of New Mexico and remanded to the district court.

Beaubien had left six children; Maxwell married one of them, and purchased the interest of the other five for a consideration of not more than \$3,500 each, at the following dates: Juana and her husband, Joseph Clouthier, and Isadora and her husband, Frederick Muller, April 4th, 1864; Eleanor and her husband, Vidal Trujillo, July 20th, 1864; Petra and her husband, Jesus G. Abreu, February 1st, 1867; Paul Beaubien, January 1st, 1870. Muller and Clouthier were merchants residing at Taos; Trujillo and Abreu were farmers, stock-raisers, and also had stores; all four of them, as well as Sheurich and Hicklin, the husbands of Alfred Bent's two sisters, were intelligent men, ranked among the best citizens in their community, and were considered men of wealth and influence.

At the April term, 1866, of the district court for Taos county, and on the 9th day of that month, the death of Alfred Bent was suggested by counsel for complainants in the then pending suit, and,

on their motion, his three infant children, Charles Bent, Julian Bent, and Alberto Silas Bent, were made parties complainant by the following order entered of record in said cause :

118 Be it remembered that at a regular term of the district court for the first judicial district of the Territory of New Mexico, begun and held within and for the county of Taos, on the 9th day of April A. D. 1866, on the second day of said term, among other things the following proceedings were had, and were in the words and figures following, to wit :

ALFRED BENT and Others	}	No. 1. In Chancery.
vs.		
THE HEIRS OF CHAS. BEAUBIEN and Others.		

Now on this day came the complainants by their counsel and suggest to the court the death of Alfred Bent, one of the complainants herein, and moves the court for leave to make Chas. Bent, Julian Bent, and Alberto Silas Bent, his children and heirs, parties complainants herein, which said motion is granted by the court, and the said Chas. Bent, Julian Bent and Alberto Silas Bent, are hereby made parties complainant to this bill of complaint.

And afterwards, to wit, on the fourth day of said term of said court, among other things the following proceedings were had, which are in the words and figures following, to wit :

119 The two last above mentioned orders were made at the instance and in accordance with the wish of said Maxwell or his counsel as necessary to the validity of the conveyance.

Afterwards, at the same term, on motion of solicitors for complainants, an order appointing Guadalupe Bent guardian *ad litem*, etc., was made and entered of record in said cause as follows :

ALFRED BENT and Others	}	No. 1. In Chancery.
vs.		
THE HEIRS OF CHARLES BEAUBIEN and Others.		

By agreement of the parties, the continuance of this cause, made herein on a former day of this term of this court, is set aside, and, on motion of solicitors for complainants, Guadalupe Bent — hereby appointed guardian *ad litem* and commissioner in chancery for the minor heirs of Alfred Bent in this cause, with full power to execute deeds, or to carry into execution all sales or transfers made of their interest in and to the real estate therein described to Lucien B. Maxwell, one of the defendants in said cause, and this cause stands continued until the next term of this court.

120 In the meantime the negotiations for compromise, which had been interrupted by the death of Alfred Bent, were resumed, the Bent heirs being now represented by Aloys Sheurich, husband of Teresina, one of the adult complainants, who acted in

said negotiations on behalf of his wife, Estefana and her husband, Hicklin, and Guadalupe Bent. A settlement with Maxwell was concluded by Aloys Scheurich, acting for his wife, Mrs. Hicklin and her husband, and Guadalupe Bent as guardian *ad litem* for Alfred's children, which was acceptable to said parties, by which Maxwell was to pay the sum of \$18,000 for the conveyance of the interest or claim of the Bent heirs. The compromise was advised by Merrill Ashurst, the leading counsel for the Bent heirs, the grounds of his advice not being stated. It was accepted and carried out by the adult complainants Teresina and Estefana and their husbands, Sheurich and Hicklin. Sheurich and the other complainants did not consider their claim after the decree of 1865 as being doubtful or uncertain, but made a settlement, one of the reasons therefor being the consideration that the lawsuit involving their interests might drag on a long time and that they were doubtful when the end would be reached, Maxwell having said to Sheurich that he would outlaw them or put them off from court to court, he having means to do so, and having some time before told Sheurich that he paid his attorney \$1,000 to put the case off for six months.

On May 3rd, 1866, in pursuance of said compromise, Guadalupe Bent *née* Long executed a deed to Maxwell for the stated consideration of \$6,000 as follows:

121 (U. S. I. R. S. \$10,000, Taos, N. M., May 3, 1866.)

Know all men by these presents, whereas, I, Guadalupe Bent *née* Long, of the town of El Rancho, in the county of Taos, and Territory of New Mexico, and widow of Alfred Bent, late of the same place, deceased, by virtue of a decree and order of the district court of the United States of America, for the first judicial district, of the Territory of New Mexico, at the April term of said court A. D. 1866, held within and for the said county of Taos, was appointed guardian *ad litem*, and commissioner in chancery for Charles Bent, Julian Bent and Albert Silas Bent, minor heirs of the said Alfred Bent, deceased, as aforesaid; and, whereas, the words of said decree and order of said court are as follows, to wit:

"Territory of New Mexico, First Judicial District Court, County of Taos, April Term, 1866.

ALFRED BENT and Others	}	(No. —.) In Chancery.
<i>vs.</i>		
THE HEIRS OF CHARLES BEAUBIEN and Others.		

"By agreement of the said parties, the continuance of the cause made herein on a former day of the present term of this court, is set aside, and on motion of solicitors for complainant, Guadalupe Bent is hereby appointed guardian *ad litem*, and commissioner in chancery for the minor heirs of Alfred Bent in this cause, with full power to execute deeds, or carrying into execution all sales or transfers made of their interest in and to the real estate therein

described, to Lucien B. Maxwell, one of the defendants in said cause, and that this cause stand continued until the next term of this court," all of which proceedings so had as aforesaid, will

122 fully appear by the records of said court, to which reference is hereby made. Now, therefore, by reason of the premises,

and by virtue of the power and authority on me conferred by the said decree, I, Guadalupe Bent, guardian *ad litem*, and resident as aforesaid, for and in consideration of the sum of six thousand (\$6,000) dollars to me in hand paid by the said Lucien B. Maxwell, of El Cimarron, of the county of Mora, and Territory of New Mexico, the receipt of which is hereby acknowledged, have granted, bargained and sold, conveyed, confirmed and transferred, as by these presents, I do grant, bargain and sell, convey, confirm and transfer unto the said Lucien B. Maxwell, his heirs and assigns, the following-described real estate, situate, lying and being in the aforesaid county of Mora, and Territory of New Mexico, and known and described as the "Rayado grant," heretofore granted to Charles Beaubien, and Guadalupe Miranda by Governor Armijo, on the eleventh day of January, A. D. 1841, and which is bounded and described as follows, to wit: Beginning on the east bank of the Rio Colorado at a mound of rocks; thence running in a straight line eastward to the first hills to another mound of rocks; thence continuing from south to north on a parallel line with the River Colorado to the third mound of rocks on the northern edge of the table-lands of Chicouca O'Chacuaco; thence running westward and following the edge of the said table-lands of Chacuaco to the top or comb of the Sierra Madre, to the fourth mound of rocks; thence from north to south, following the top of the said Sierra Madre to the Cuesta del Osha, one hundred (100 v.) varas, to the north of the road to Fernandez and to the Laguna Negra to the fifth mound of rocks; thence running anew to the east towards the Rio Colorado, and following the southern edge of the table-lands of Rayado and Gonzalitos to the eastern point of these table-lands to the sixth mound of rocks; and thence following in a northerly direc-

123 tion until the said line strikes the Rio Colorado on the western bank of said river, where the seventh mound of rocks was placed.

To have and to hold the one undivided one twelfth (one-12th) interest, of, in and to the above-described real estate, together — all and singular, the rights, immunities, hereditaments, privileges and appurtenances thereunto belonging or in anywise appertaining unto the said Lucien B. Maxwell, and his heirs and assigns forever; the said one-twelfth undivided interest being the entire interest, estate, claim and demand of the said Charles Bent, Julian Bent and Alberto Silas Bent said minor heirs of their father, said Albert Bent, deceased, of, in and to the real estate as a child, and one of the heirs of Charles Bent, Senior, late of the Territory of New Mexico, deceased; and I, the said Guadalupe Bent, guardian *ad litem*, do hereby covenant to and with the said Lucien B. Maxwell, his heirs and assigns, that the above-described interest hereby conveyed of, in and to the said real estate, is free and clear from all incumbrances,

and that I, my heirs, executors and administrators, shall and will warrant and defend the title to the same unto the said Lucien B. Maxwell, his heirs and assigns forever, against the lawful claims or demands of all persons whomsoever.

In witness whereof, I have hereunto set my hand and seal this third day of May, A. D. eighteen hundred and sixty-six.

GUADALUPE BENT *Née* LONG, [SEAL.]

*Guardian ad Litem of Charles Bent,
Julian Bent, and Albert Silas Bent.*

Signed, sealed and delivered in presence of—

ADOLPH LETCHER.

WM. BLACKWOOD.

TERRITORY OF NEW MEXICO, } ss :
County of Taos,

Be it remembered that on the third day of May, A. D. 124 eighteen hundred and sixty-six, personally came before me the undersigned clerk of probate, within and for the county aforesaid, Guadalupe Bent *née* Long, who is personally known to me to be the same person whose name is subscribed to the foregoing deed of conveyance as party thereto, and she acknowledged that she executed the same as her free and voluntary act and deed, for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed the seal of the said court the day and year last above written.

[Seal Probate Court, Taos County, N. M.]

INOCENCIO MARTINEZ,

*Clerk of the Court of Probate for the County
of Taos, Territory of New Mexico.*

Filed at 3 o'clock p. m. January 16, 1870.

J. LEE, *Clerk.*

TERRITORY OF NEW MEXICO, } ss :
County of Colfax,

I, the undersigned, clerk of the probate court and *ex officio* recorder for said county, Territory aforesaid, do hereby certify that the foregoing is a true and correct — of the instrument as recorded in my office. Deed Book "A," pages 78, 79, 80, and 81.

Witness my hand and official seal, this first day of September, A. D. 1870.

[Seal Probate Court, Colfax Co., N. M.]

JOHN LEE,

Clerk Probate Court and ex Officio Recorder.

125 No other conveyance was made by Guadalupe Bent, the said conveyance having been prepared by counsel for Maxwell after one dictated by counsel for the Beaubien heirs.

On the same day Teresina Sheuruch *née* Bent, daughter of Charles

Bent and sister of Alfred Bent, executed to Maxwell a like conveyance, conveying a like interest for the recited consideration of \$6,000, with like covenants; and afterwards, on May 31st, 1866, Estefana Hicklin, also a sister of Alfred Bent and daughter of Charles Bent, joined by her husband, Alexander Hicklin, executed to Maxwell a like conveyance of a like interest for a recited consideration of \$6,000, with like covenants.

Afterwards, at the September term, 1866, of the said district court for Taos county, on September 13th, 1866, a decree was made and entered of record in said cause as follows:

And afterwards, to wit, at the September term of said court, 1866, begun and held on the 10th of said month of September, and on the 3rd day of said term of said court among other things the following proceedings were had, which are in the words and figures following, to wit:

GUADALUPE BENT, Guardian *ad Litem* for
Charles Bent, Julian Bent, and Alberto
Silas Bent, Minor Heirs and Children of
Alfred Bent, Deceased; Alexander Hicklin
and Estefana Hicklin, His Wife; Aloys
and Terisa Bent, His Wife,

vs.

LUCIEN B. MAXWELL, FREDERICK MILLER,
Jesus G. Abreu, Executors of the Estate
of Charles Beaubien, Deceased; Luz
Beaubien and Lucien B. Maxwell, Her
Husband; Leonor Beaubien, Teodora
Beaubien and Frederick Miller, Her
Husband; Petra Beaubien and Jesus G.
Abrieu, Her Husband; Juana Beaubien
and Joseph Clothier, Her Husband, and
Pablo Beaubien, by Frederick Miller, His
Guardian.

No. 1. In Chancery.

126 In the District Court for the County of Taos, in Chancery
Sitting.

Whereas an interlocutory decree was rendered at a former term of this court in the above cause, decreeing one-fourth of the land mentioned in the petition herein to the complainants in this cause, and appointing commissioners to divide and set apart the portion so decreed, and whereas said interlocutory decree was never carried into effect, and whereas since the time of the rendition of said decree a mutual agreement has been made between the parties to this cause, settling and determining all the equities in the same:

It is therefore hereby ordered, adjudged and decreed by the mutual consent and agreement of the said complainants as well as of the said defendants in this cause, that the interlocutory decree above mentioned, together with all orders made under and by virtue of the same be set aside; and by the mutual consent and agreement

of the said parties, it is hereby further ordered, adjudged and decreed that the said Lucien B. Maxwell, one of the defendants in this cause, pay to the said complainants the sum of eighteen thousand dollars, to be divided among them *per stirpes*, that is to the said Aloys Scheurick and Teresina Bent, his wife, one-third part, and to Alexander Hicklin and Estefana Bent, his wife, another third part, and to Charles Bent, Julian Bent and Alberto Silas Bent, the children and heirs of Alfred Bent, deceased, the remaining third part, to be equally divided among the said last named and to be paid into the hands of Guadalupe Bent, widow of the — Alfred Bent, deceased, and guardian *ad litem* for said children for the purposes of the said division.

And upon the further consent and agreement of the said parties, it is hereby further ordered, adjudged and decreed, that the said Alexander Hicklin and Estefana Bent, his wife, the said Aloys

127 Scheurick, and Teresina Bent, his wife, and the said Guadalupe Bent, guardian, *ad litem*, for Charles Bent, Julian Bent and

Alberto Silas Bent, children and minor heirs of the said Alfred Bent, deceased, within ten days from the day of the date of this decree, make, execute and deliver to the said Lucien B. Maxwell good and sufficient deeds of conveyance of all their right, title, interest, estate, claim and demand of in and to the lands in controversy in this cause; the said Guadalupe Bent, guardian *ad litem* as aforesaid, in the name of Charles Bent, Julian Bent and Alberto Silas Bent, minor heirs as aforesaid, and the said Alexander Hicklin and Estefana Bent, his wife, and the said Aloys Scheurick and Teresina Bent, his wife, in their own names. And by further consent and agreement between the said parties, it is hereby further ordered, adjudged and decreed, that the costs of this suit shall be paid, each of the said parties to pay the separate costs in the same made by themselves.

128 The said decree was not made by the personal procurement, knowledge, or consent of said Scheurich or Guadalupe Bent, and the fact of the entry thereof was unknown to them for several years thereafter.

No other pleadings, orders, or proceedings in said cause, other than those above mentioned or recited, appear in the record thereof, and the record thereof does not show whether or not any inquiry was made by the court or by its authority touching the value of the said premises, or of the interest of the now plaintiffs therein, or as to the necessity of disposing of the same, or touching the other estate or means of the said infants, or the ability of the mother of said infants to maintain and educate the said infants, or touching the propriety, necessity, or advisability of such sale and conveyance of the interest of the now plaintiffs, nor does there appear of record any motion, petition, or showing against the propriety of the original decree vacated by the said decree of September, 1866.

The grant in question contains about one million seven hundred thousand acres, about two hundred thousand acres of which lie in the State of Colorado, and the balance in New Mexico, and contains some of the best and most valuable lands in the Territory; it con-

129 tains large areas of grazing and tillable land, and is traversed by several streams, furnishing water for irrigation, a small part of which was cultivated in May, 1866, and it contains, in addition, large bodies of timber, and in May, 1866, was known to contain considerable coal deposits, and was then believed and has since proven to have considerable deposits of precious metals, including gold and silver. At and about the year 1866 and for several years thereafter there was no demand for or sales of undivided interests in lands of the quantity, character, and location of those in question, such as to create any ascertainable market value thereof. Statements of the value of said land, in the opinion of the witnesses examined in the present suit, based upon a valuation per acre, are given in the testimony, varying from two and one-half cents to one dollar and twenty-five cents, and it is impossible from these statements to satisfactorily ascertain or fix what was the value per acre of said grant in or about 1866. It cannot be said from the testimony that there was a market for such grants at the time in the sense of a demand for them, their value being largely speculative for the future.

It is proven on the part of the complainants that the said Guadalupe Bent is a Mexican woman, and at the time of her said appointment as guardian *ad litem* to the infant complainants and at the time of the execution of her deed of May 3rd, 1866, was ignorant of the English language, unable to read, write, or speak the same; was unfamiliar with business or with her duties as guardian *ad litem*; was without knowledge of the boundaries or extent of said lands, or the character or value thereof, or of the act of Congress con-
130 firming the said grant, or of the particulars of the decree of

June 3rd, 1865; that Maxwell represented to Sheurich that the grant was not as large as it was supposed to be; that it did not extend into Colorado or beyond the Red river, whereas it did so extend over 200,000 acres; that said Scheurich and Guadalupe Bent believed and were influenced by said representations; that the said Maxwell, while generous and magnanimous in many respects, was unscrupulous and tyrannical as well, and was a resolute and determined man, and was at that time a man of large wealth and great power and influence throughout the county of Taos and Territory of New Mexico, as was known to said Guadalupe Bent, and he exercised such power and influence in such way that the weak feared to oppose him in matters of personal concern; that said Guadalupe Bent was in part influenced in executing said conveyance by this known character of Maxwell; that Maxwell made threats that unless the Bent heirs accepted the sum of \$18,000 for their claims they would never get anything, and that no one should occupy any part of his land, and that such threats were communicated to said Guadalupe, and that this and Maxwell's known character influenced her in making the conveyance to Maxwell; that the said conveyance was written in the English language and was not read over to said Guadalupe or interpreted to her, but it appears to be the fact that means of knowledge of the extent, character, and value of the said grant was open to the Bent heirs

and to their counsel. It was not definitely known at the time where the boundary line between Colorado and New Mexico was. Guadalupe Bent acted in concert with the adult complainants in the suit, dealing with their own interests on the same terms as those she represented, and she was willing to make the same settlement they did. Both Scheurich and the counsel for the Bent heirs were conversant with both the English and Spanish language- and could read and write the same.

It appears by Guadalupe Bent's own testimony, and the court accordingly finds, that when she executed the conveyance to Maxwell she understood there had been a settlement with Maxwell by which the interests of the Bent heirs were to be transferred to Maxwell for the sum of \$18,000; that she understood the document she signed was a transfer of the interest in the Maxwell grant, which had belonged to her husband, Alfred Bent; that the settlement for \$18,000 was satisfactory to her; that she supposed the document she signed was one which Scheurich had arranged with Maxwell; that she had relied on said Schurich for advice, and was willing to accept and do whatever he thought best in the matter; that she believed she had authority to sign the deed and to convey the interest in said grant which her former husband, Alfred Bent, had claimed or owned, and it was her intention by the said deed to convey to Maxwell whatever interest in said grant had belonged to said Alfred Bent in his lifetime and was left by him at his decease, and the court finds that no fraud, imposition, or error has been shown to have entered into said transaction or to have brought about said compromise decree.

No money was received by Guadalupe Bent from Maxwell at the time of the execution of said conveyance. Maxwell, upon the execution of the deeds by her and the two sisters of Alfred Bent, gave to them his three promissory notes, payable in one year, amounting in all to \$18,000, divided into such sums as were desired by the said parties. Guadalupe Bent received one of these notes for something over \$5,000. As to the payment of this note the testimony is conflicting. Guadalupe Thompson testifies that it was paid to her second husband, George W. Thompson, because her husband told her so, to whom she was married about thirteen months after the death of her husband, and to whom she delivered said note with everything else she had when she married him and whom she authorized to collect said note. George W. Thompson and other witnesses testify that only a portion of said note was paid. The note is not produced, but its absence is accounted for by the statement of Thompson that he sent it to Maxwell at his request to have a credit endorsed and that he never got it back. It does not appear that Maxwell refused to return it. The weight of the evidence is found to be that at the beginning of the Maxwell Company suit a considerable sum, but how much cannot be ascertained, remained unpaid on the note. It also appears that Maxwell was at all times after the making of the note a man of ample financial responsibility. It does not appear that any part of the proceeds of said note was paid to the children of Alfred Bent or their mother,

but George W. Thompson supported, maintained, and educated them during their minority after his marriage to their mother with the funds of his wife and himself the same as his own children, keeping no separate accounts.

Upon the execution and delivery of the deeds by Guadalupe Bent, guardian *ad litem*, and the adult complainants, May 3rd, 1866, Aloys Scheurich and his wife assumed for complainants in said original suit payment of the fees of their counsel therein and paid the same, the amount thereof being included in the note of Maxwell given to Scheurich's wife and the *pro rata* amount thereof being deducted from the other two notes given to Guadalupe Bent and Mrs. Hicklin in equal proportions. There is no evidence that such counsel or other counsel were afterwards retained by Scheurich or other of said complainants, and the record of the said decree of September, 1866, does not disclose what attorney appeared or assumed to appear for the complainants in said cause and consented to the making of said order.

The inventory of the property left by Alfred Bent and filed March 6th, 1867, by Guadalupe Bent, as administratrix, in the probate court shows that outside of the real estate and the note received from Maxwell the total assets of the estate were \$1,408. The debts mentioned in the will of Alfred Bent, together with additional claims against the estate admitted and allowed in the probate court, amounted to \$2,423; but witnesses familiar with said Bent's affairs testify that at the time of his death he had both real and personal property, other than that inventoried, both in New Mexico and in Colorado.

And the court makes and certifies the foregoing statement and findings as the facts proven and established by the evidence in each of said causes, and orders that the same be incorporated in the record as part thereof.

THOMAS SMITH,
Chief Justice.

Filed October 15th, 1895. Geo. L. Wyllys, clerk. (Findings of fact.)

133½ And afterwards, to wit, on the 23rd day of November, 1895, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico an affidavit of value in said cause; which said affidavit was and is in the words and figures following, to wit:

133½ In the Supreme Court of New Mexico.

CHARLES BENT *et als.*, Plaintiffs and Appellants,

vs.

THE MAXWELL LAND GRANT & RAILWAY COMPANY *et als.*, Defendants and Appellees.

I, Sol H. Jaffa, being first duly sworn, says on oath: I reside at Trinidad, in the county of Las Animas, in the State of Colorado. I

am engaged in the business of merchandising. Trinidad is not more than ten miles from the northern limit of what is known as the Maxwell land grant, situate partly in Colfax county and partly in Las Animas county, Colorado. I have resided in the same vicinity—some of the time in Colorado and some of the time in New Mexico—for more than twenty years last past. I know the Maxwell land grant before mentioned, the same an interest in which is claimed by the plaintiffs and appellants in this above-entitled cause, and have been acquainted with it for more than twenty years last past. I have been over a good part of the area of the ground, and I believe I am pretty well acquainted with what it contains. A large — of it is grazing land. It contains a great many thousand acres of very valuable timber. Gold mines have been discovered and have yielded large sums and are still being worked. Extensive mines of coal have been opened and are still being worked, and upon the immediate vicinity of the water-courses there is quite a considerable area of irrigable and tillable land. The whole ground is understood to contain, and I should think does contain, not far from two million acres of land. I think I know the boundaries of this grant, and I think this estimate as to the contents of it is not too great. I believe I am acquainted with the value of lands in Colfax county, New Mexico, and Las Animas county, Colorado, according to the current-going market prices thereof, and I am confident that an undivided one-twelfth part of this grant is worth not less than three hundred & seventy-five thousand dollars. I am not a party to this litigation nor in any way interested therein.

SOL H. JAFFA.

133 $\frac{1}{2}$ Subscribed and sworn to before the undersigned, a notary public in and for the county of Las Animas, at the said county of Las Animas, in the State of Colorado, this 18th day of November, A. D. 1895.

WILLIAM LITTLEFIELD,

[SEAL.]

Notary Public.

My commission expires May 19th, 1896.

134 And afterwards, to wit, on the 12th day of November, 1895, there was filed in the office of the clerk of said supreme court of the Territory of New Mexico an affidavit of the value of the property involved in said suit; which said affidavit is in the words and figures following, to wit:

In the Supreme Court of New Mexico.

CHARLES BENT <i>et als.</i> , Plaintiffs and Appellants,	}
<i>vs.</i>	
THE MAXWELL LAND GRANT & RAILWAY COMPANY <i>et als.</i> , Defendants and Appellees.	

Albert W. Archibald, being first duly sworn, says on oath: I reside at Trinidad, in the county of Las Animas, in the State of Colo-

rado, and have resided there and in that part of Colorado since about the year 1861. During a considerable part of that time I have followed the business of land surveying. I believe I am well acquainted with what is known as the Maxwell land grant, lying partly in Las Animas county, Colorado, and partly in the county of Colfax, in the Territory of New Mexico, and have been acquainted with that tract since about the year 1858. I have frequently visited the grant and have traveled over a very considerable part of its area. I think I am acquainted with the character of the surface, its products and capabilities. A very large part of the ground is good grazing ground and has probably no other value. A considerable part of it—the most part of it along the streams—is cultivated and is valuable for cultivation. I cannot say with confidence the area of irrigable land within the grant, but I think it certainly is not less than fifty thousand acres. A very large part of the grant is covered with forests of pine and spruce timber, valuable for the manufacture of lumber, railway ties, and other like purposes. Near Elizabethtown valuable mines of gold and silver were discovered as long ago as 1867 and were worked for several years, yielding large values in gold and silver; they have not been extensively worked of late years, but it is not believed that they have been exhausted. Very extensive mines of coal are found upon the grant, and these coal mines have been worked for more than ten years last past, yielding large quantities of coal. I believe I know the boundaries of the grant and am sufficiently acquainted with it to fix its value. I am satisfied that an undivided twelfth part of this grant is at this time worth not less than three hundred and fifty thousand
 135 dollars. In the present times there is no active market for real property, and it is difficult to estimate the value of so extensive a tract as this, because purchasers of so extensive a tract are not often found, but I make this estimate as to what I think the ground ought to bring if a purchaser could be found willing to pay a reasonable price.

ALBERT W. ARCHIBALD.

Subscribed and sworn to before the undersigned, a notary public in and for the county of Las Animas, at the said county of Las Animas, in the State of Colorado, this ninth (9th) day of November, A. D. 1895.

[SEAL.]

E. BRIGHAM,
Notary Public.

My commission expires Aug. 28, 1898.

And be it further remembered that on the ninth day of October, 1895, there was filed in the office of the clerk of the supreme court of New Mexico the opinion of said court in said cause; which said opinion is hereto annexed, in accordance with rule 8 of the Supreme Court of the United States, and is in the words and figures following, to wit:

136 In the Supreme Court, Territory of New Mexico.

CHARLES BENT *et als.*
vs.
 GUADALUPE MIRANDA *et als.* } No. 579. Appeal from Colfax County.

Statement of Facts.

For a full statement of the bill in this case, which is very lengthy, reference is made to the case of Bent *v.* Maxwell L. G. & R'y Co., 3 N. M., 158; 3 Pac., 721.

The Maxwell Company answered, denying all allegations of fact made in the bill, except what appears of record; that the decree of September, 1866, was erroneous and void, or that the decree of June, 1865, vested in the Bent heirs a legal estate, but avers it was merely interlocutory. It avers the fairness of the alleged compromise agreement, and that the price paid was a liberal one, and denies all fraud, imposition, or error, as charged.

The testimony showed that the decree of June, 1865, was obtained during the lifetime of Alfred Bent, and that prior to his death negotiations for a sale of his interest and that of his two sisters, which had been declared by said decree, were pending; that subsequent to his death these negotiations were resumed, one Aloys Sheurick, the husband of one of said sisters, conducting the negotiations; that on May 3rd, 1866, the negotiations eventuated in a deed being executed by said sisters and their husbands and Guadalupe Bent, mother of complainants, as guardian *ad litem* for them, conveying, upon a consideration of \$18,000, all their interests to L. B. Maxwell in the Beaubien and Miranda grant, the property in controversy.

There are various estimates given in the testimony as to the value of said interests, based upon a valuation per acre of the land in said grant from two and one-half cents to one dollar and twenty-five cents, many witnesses saying that there was no market value whatever to such lands at that time, and there is other testimony showing that other interests in the grant were purchased from persons

137 *sui juris* at a less rate than the Bent heirs obtained, and that such were ordinary business transactions at that date. Apart from the testimony to the effect that Maxwell was a man of great influence; that he was determined, resolute, and unscrupulous; that he made threats that no one should occupy any part of his land, and that people at that time had no desire to oppose any of his wishes as to anything he desired to accomplish; there is nothing from which there might be gathered any suggestion of fraud or imposition whatever. It is shown that the solicitors advised the settlement, and that Sheurick, parting with his wife's interest on the same terms, also advised it. There is some testimony also that Maxwell misrepresented to Sheurick the extent of said grant, saying that it only went to the north boundary of New Mexico, when in fact it extended into Colorado, and it is also shown that at that time also the line of New Mexico was thought to extend much farther

north than it was afterwards determined to be, and it was not made very clear whether this was a material misstatement or not.

The recitals in the bill sufficiently refer to all documentary evidence necessary to an understanding of the case.

Opinion of the Court.

COLLIER, A. J.:

At the threshold of this case arise important questions:

1. Is the decree of June, 1865, interlocutory or final?
2. If interlocutory, is it so in a limited sense, as specified in the decree, or upon the whole merits?

The discussion of the question as to whether a decree is final or interlocutory in its nature arises generally, or we might say almost universally, upon motions to dismiss in appellate tribunals for alleged prematurity of appeal. It would certainly be true that if a decree was final in the sense that it has become appealable, it would also be final in every other respect and as to all matters it adjudicates, but is the contrary true, that a decree which is not appealable because interlocutory is interlocutory as to everything decided by it?

The decisions of the Supreme Court of the United States upon the question of finality of decrees proceed, not only upon the theory of their being appealable or not, but also they are direct authority (as a general rule) only upon the construction of the act of Congress allowing appeals from the United States district and circuit
138 courts from final judgments. There is, however, no special significance to be attached to this fact, as decrees final in the same sense are appealable only in this Territory, or at least such seems to be conceded by counsel for appellants and appellees, but that statement is pertinent in view of the fact that the United States Supreme Court will refuse to dismiss an appeal as to a decree claimed to be interlocutory solely because the supreme court of a State has held it to be appealable.

W. & B. B. Co. v. W. B. Co., 138 U. S., 287.

As to whether a decree is final, so as to be appealable, is said by Justice Brown, in *McGourkey vs. Toledo & Ohio R'y*, 146 U. S., 536, to have been of more frequent discussion in that court than any other question of equity practice, and that it must be conceded that the cases are not altogether harmonious.

As favoring their view, that this decree is final as to the merits of the controversy, even to the extent of being appealable, appellants cite *Forgay vs. Conrad*, 6 How., 201, and the cases of *Thompson vs. Dean*, 7 Wall., 342, and *Winthrop Iron Co. vs. Meeker*, 109 U. S., 180, in which the doctrine laid down in *Forgay vs. Conrad*, *supra*, is expressly reaffirmed. Other cases speak of the case of *Forgay vs. Conrad* being exceptional, some saying the peculiar circumstances and the certainty of irremediable injury ensuing, if an appeal could not be taken from a decision in which the whole question had been adjudicated, because of there being a reference to a master in which

further action must be taken by the court in the matter of an account, should have made it appealable, and some that it was only sustainable upon the theory of execution being awarded. The other line of decisions which appellees have cited to sustain their contention that this is an interlocutory decree begins, strange to say, with the case of *Perkins vs. Fourniquet*, 6 How., 206, which immediately succeeds *Forgay v. Conrad*, *supra*, the opinions in both cases being from the pen of Taney, C. J.

While in some respects the decree in *Perkins vs. Fourniquet* more resembles the one at bar than does that in *Forgay vs. Conrad*, there is a similarity in the decree here and in *Forgay vs. Conrad*, in the fact that in both the decree recites that the bill is retained for a limited purpose, here as to the partition and there as to the adjusting of accounts. The dissimilarity in this respect from the decree in *Perkins vs. Fourniquet* is marked, in that in it all matters "are reserved until the incoming of the master's report."

139 In *Pulliam vs. Christian*, 6 How., 209, next succeeding *Perkins vs. Fourniquet*, it was held that a decree setting aside a deed and ordering the property delivered to a commissioner of the court to take an account and "report all matters necessary to a final decree" was "final only as to the trust deed," but, not being final as to the whole matter in controversy, the appeal was dismissed. Other cases, beginning with *Craighead vs. Wilson*, 8 How., 201, say "that to authorize an appeal a decree must be final in all matters within the pleadings so that an affirmance of the decree will end the suit." These citations represent quite completely the positions arising in discussions as to whether or not a decree is final so as to be appealable. Tested by the rule stated in *Craighead vs. Wilson*, *supra*, it would seem that this decree was not final so as to be appealable, because the pleadings certainly embraced two matters, one the establishing of the interest claimed and the other the partition sought by the bill.

The bill in *Perkins vs. Fourniquet*, as it sought the establishment of a certain interest in real estate and partition, is very like the case at bar. We think it would be a profitless task to enter upon a discussion to reconcile cases which later decisions of the United States Supreme Court say are not entirely harmonious, but we hold that the decree of June, 1865, was not final so far as to be appealable, thus following what we conceive to be the rule in *Craighead vs. Wilson*, *supra*.

There recurs, then, the question as to whether it was final in the sense that it could not be vacated in the court where rendered after the term at which it was rendered, the decree reciting on its face that "the court now reserves and suspends making its decree as to the partition and payment of the costs until a future term of this court." Upon this point appellee again cites *Perkins vs. Fourniquet*, *supra*, as later reported in 16 How., 82. In the first decision Chief Justice Taney, delivering the opinion there, said that "these interlocutory orders and decrees remain under control of the circuit court and subject to their revision," and the circuit court did at a subsequent term, in fact, reconsider its opinion, and, finding that

there was no equity in the bill, dismissed same, it formerly holding precisely to the contrary, and in 16 How., 82, Taney, C. J., again rendering the opinion, this was held to be proper, and that 140 if the court discovered itself to be in error it had the right to correct the error. This case certainly seems to establish the principle counsel for appellees contend for. It is true that the first decree decided to be interlocutory did in terms say that all matters "are reserved until the incoming of the master's report;" but that clause did not appear to weigh in the mind of the court, but the right appears to be proclaimed that prior to the time the right to take appeal began the case should be rightly decided upon all issues, notwithstanding a prior erroneous adjudication. There are expressions in the opinions of the court in other cases which appear to militate against this view, as, for instance, in *Fulliam vs. Christian*, 6 How., 209, the court say this decree "is final only as to the trust deed," but, not being final as to the whole matter in controversy, "is not appealable." In *Beebe vs. Russell*, 17 How., 283, the court say, in discussing *Forgay vs. Conrad*, *supra*, that it was "doubtful if the lower court could in any way control or qualify its antecedent decree upon the whole merits except upon a petition for a rehearing."

These chance expressions should not, it appears to us, weigh against the effect of the decision in 16 How., 82, *supra*, and we therefore hold that the decree was interlocutory and subject to be set aside at a future term of the court merely because it was up to that time not appealable.

This brings us to the contention of counsel for appellants that the decree of September, 1866, showing upon its face that the consent upon which it was based was not a legal consent so far as these complainants are concerned. It was merely a modification of the prior decree *pro tanto*—that is to say, so far as the adult complainants were interested it was entirely abrogated, and so far as the infants were affected it dismissed only the partition part of the former decree, if even it did that much.

The position taken by appellants' counsel in their brief that "every presumption of law is in favor of the validity of a judgment by a court of competent jurisdiction, and the jurisdiction to render a particular judgment is supported by like presumption, except when the want of jurisdiction appears on the face of the record," and for which they cite a number of cases, we believe to be well founded in law.

We come, then, to the point as to whether or not the recital 141 in the decree of September, 1866, of consent as affecting these complainants, they being minors and represented by their mother as guardian *ad litem*, of itself invalidates the decree of September, 1866. Our holding that the decree of June, 1865, was merely an interlocutory decree and subject to revision at a subsequent term of the district court carries the conclusion that the suit in which they were complainants was at the time of the September, 1866, decree a suit pending with nothing in it that was *res adjudicata*. Appellees claim that under such circumstances it was open to com-

promise, and that also the interest claimed, whatever might be said as to the effect of a final decree establishing it, was then at all events merely an equitable estate. Taking these propositions in inverse order, we think it is manifest that prior to final decree the legal estate was in Beaubien and Miranda, the grantees of the Mexican government, and that prior to final decree establishing their interest complainants had nothing more (if anything) than an equitable estate. As clearly stated in *Cochran vs. Van Sorley*, 20 Wend., 376, "it is a settled principle that whenever the property of infants consists of real or personal estate, the legal title to which is in trustees, the chancellor, as the general guardian and protector of the rights of all infants, may authorize such a disposition thereof as he in the exercise of a sound legal discretion may deem most beneficial for the infants." In *Woods vs. Mathew*, 38 Barb., 473, and *Anderson vs. Mathew*, 44 N. Y., 260, it is said that "upon principle and authority a court of chancery has power to sell equitable interests of infants, and that such power is inherent and independent of statutory authority."

We hold, therefore, that the interest of these complainants being at the date of the September, 1866, decree an interest claimed in a pending suit, equitable in its nature and sought to be established, according to the contention of appellant's counsel, as a legal estate, and the decree adjudicating it not being yet final, but interlocutory and under the control of the court, there was legal discretion and jurisdiction in the district court to dispose of it for a money consideration, if deemed for the best interests of the infant complainants.

Shall it then be said that because the decree professes as its basis "consent, when the complainants were not *sui juris*, vitiates
142 it, when, if the consent had not been stated, the decree would be upheld by every presumption of law and fact? We think not, but that a fair construction would be that the court considered it beneficial to the interests of these minor complainants, and for that reason the decree was entered, and the recital of the consent and agreement were merely incidents of the transaction, the law finding a basis for the decree in the discretion of the chancellor exerted in the infant's behalf.

It is stated in *Kingsbury vs. Buckner*, 134 U. S., 680, that "a guardian *ad litem* cannot bargain away the rights of the infant he represents, but he can assent to such arrangements as will facilitate the determination of a suit." It is also said that "it is the duty of the court to protect the interests of infants and see that they are not bargained away by those assuming to represent them."

In *Taylor vs. Franklin Savings Bank*, 50 Fed. Rep., it is stated to be well settled that "infants can by an original bill in the nature of a bill for review attack any decree entered against them during their infancy and have it set aside for fraud or error in fact."

This case is essentially like the case at bar in one respect, viz., the decree was entered upon a settlement and compromise made between a foreclosing bank and the guardian *ad litem* of infant defendants, and the court say, "It may be, and probably is, true that

so long as this decree is allowed to stand it is binding by its terms on the infant defendants;" and then, after announcing, as above, the rights of attack by them for fraud or error of fact, the decree was held to be successfully impeached for fraud and was set aside. There was no pretence in that case that the settlement and compromise by the guardian *ad litem* vitiated of itself the decree, but it must have been taken by the court as advisory and was held unauthorized and inequitable because of the suppression of facts known to the plaintiff.

We hold, therefore, that the mere statement on the face of the decree that there was consent does not operate to show it was based on that alone, and that it will be presumed there was a reasonable exercise of discretion, intended for the benefit of said minors.

The United States Supreme Court, in *Thompson vs. Maxwell*, 95 U. S., 398, has said that this "decree for carrying out a settlement and compromise of a suit is certainly not of itself erroneous. When made by consent it is presumed to be made in view of existing facts, and that these were in the knowledge of the parties. In the absence of fraud in obtaining it such a decree cannot be impeached."

Thus we are brought to the question as to whether there was fraud in obtaining the decree.

We do not enter into a discussion at large of the testimony by which it is claimed that the decree of September, 1866, is successfully impeached upon the ground of fraud, and while we are not prepared, in view of the testimony submitted since the decision in *Thompson vs. Maxwell*, 95 U. S., 400, to say that "the proofs show a case which, in our own judgment, supports the conclusions of the decree to the effect that the terms of the compromise made by the adult parties to the suit (including the mother and guardian of the infant heirs of Alfred Bent) were advantageous to the said infants and were so considered and accepted by the court in their behalf," we do hold that the judgment of the court at that time in so considering and accepting said terms was shown to be a fair and reasonable exercise of the chancellor's discretion, and that no fraud, imposition, or error has been shown to have entered into said transaction or to have brought about said compromise decree.

It is claimed by appellants that there has been a decision of this court, *Bent vs. Maxwell L. G. & R'y Co.*, 3 N. M., 158, which is the law of the case, and that in and by said decision it was held that the decree of June, 1865, vested in Alfred Bent a legal estate, which descended to complainants, which legal estate there was no authority in the chancellor to dispose of by sale as and by the decree of September, 1866.

From a careful reading of the bill filed in this cause, it does not appear that this portion of the opinion delivered by the court in *Bent vs. Maxwell L. G. & R'y Co.* was at all necessary to the disposition of the demurrer which had been interposed. Indeed, following upon the announcement of the court that the bill states "facts sufficient to warrant the interference of a court of equity in their behalf, and that under the authorities cited they have properly

brought their bill in the form of an original bill to impeach the decree complained of on the grounds of fraud, imposition, and error,"

Bell, A. J., *arguendo*, states what is relied — by appellant's
144 counsel as determining the law of the case, viz., that this was a legal estate established by the decree of June, 1865, and the district court had no authority to order its sale. This announcement was essentially — dictum, and if correct, as stating abstract principles of law, has, in our view, no application to this case, the decree of June, 1865, not being final, but interlocutory, and the equitable interest of Alfred Bent not having been conclusively established by a final decree in the district court.

Other questions around which have been thrown a wealth of learning and research, such as befits the ability of counsel engaged and the magnitude of the interests involved, we deem it unnecessary to advert to, as the views we have expressed are sufficient for a disposition of the cause adversely to appellants.

It is the opinion of the court that the decree of the district court in and for the county of Colfax dismissing said bill of complaint ought to be affirmed, and it is accordingly so ordered. It is further ordered that this cause be remanded to said lower court with directions to carry said decree into effect.

N. C. COLLIER,
Associate Justice.

We concur.

_____,
Chief Justice.

_____,
Associate Justice.

N. B. LAUGHLIN, A. J.,
Associate Justice.

H. B. HAMILTON, A. J.,
Associate Justice.

GIDEON D. BANTZ,
Associate Justice.

145 TERRITORY OF NEW MEXICO, {
County of Santa Fé, Supreme Court. }

I, Geo. L. Wyllys, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the foregoing is a full, true, and perfect transcript of such portions of the record in said cause as said appellants deem necessary for review in the Supreme Court of the United States as the same remain on file and of record in my office.

Witness my hand and the seal of said court, at Santa Fé, New Mexico, this 15th day of November, A. D. 1895.

[Seal Supreme Court, Territory of New Mexico.]

GEO. L. WYLLYS, *Clerk.*

CHARLES BENT *et als.*

vs.

GUADALUPE MIRANDA *et als.*

Appeal from Colfax district court.

Be it further remembered that on the 9th day of November, A. D. 1895, there was filed in the office of the clerk of the supreme court of the Territory of New Mexico a certain bond in appeal herein, then and there duly approved by the Honorable N. B. Laughlin, one of the judges of the said supreme court, and which said bond, with the approval aforesaid thereunder written, was and is in words and figures as follows, to wit:

"Know all men by these presents that we, Charles Bent, Julianio Bent, Alberto Silas Bent, as principals, and C. F. Remsburg and E. D. Wight, as sureties, are held and firmly bound unto Guadalupe Miranda, Jesus G. Abreu, as surviving executor of the last will of Charles Beaubien; Luz B. Maxwell, Petra Abreu and Jesus G. Abreu, her husband; Juana Clothier and Joseph Clothier, her husband; Pablo Beaubien, Virginia Keyes and — Keyes, her husband; Peter Maxwell, Amelia Abreu and — Abreu, her husband; Sophia Jaramillo, Pablito Maxwell, Odila Maxwell, Benigna Mares and Vicente Mares, her husband; the Unknown Heirs of Joseph Pley, deceased; Estefana Hicklin, Teresina Scheurick, Aloys Scheurick, her husband; Guadalupe Thompson, the Maxwell Land Grant & Railway Company, the Unknown Heirs of Leonora Trujillo and of Frederick Miller and Teodora Miller, his wife; the Maxwell Land Grant Company, Cyrus W. McCormick, and James M. Walker in the full and just sum of five hundred dollars (\$500), to be paid to them, their heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals this ninth day of November, A. D. 1895.

Whereas lately, at the July, 1895, term of the supreme court of the Territory of New Mexico, in a certain suit in the said court depending between the above-bounden Charles Bent, Julianio Bent, Alberto Silas Bent, as plaintiffs and appellants, and the said Guadalupe Miranda, Jesus G. Abreu, as surviving executor of the last will of Charles Beaubien; Luz B. Maxwell, Petra Abreu and Jesus G. Abreu, her husband; Juana Clothier and Joseph Clothier, her husband; Pablo Beaubien, Virginia Keyes and — Keyes, her husband; Peter Maxwell, Amelia Abreu and — Abreu, her husband; Sophia Jaramillo, Pablito Maxwell, Odila Maxwell, Bernigna Mares and Vicente Mares, her husband; The Unknown Heirs of Joseph Pley, deceased; Estefana Hicklin, Teresina Scheurick, Aloys Scheurick, her husband; Guadalupe Thompson, The Maxwell Land Grant & Railway Company, The Unknown Heirs of Leonora Trujillo and of

Frederick Miller and Teodora Miller, his wife ; The Maxwell Land Grant Company, Cyrus W. McCormick, and James M. Walker, defendants and appellees, a decree was rendered against the said Charles Bent, Julianio Bent, and Alberto Silas Bent, and the said Charles Bent, Julianio Bent, and Alberto Silas Bent having prayed an appeal from the said decree to the Supreme Court of the United States :

148 Now, the condition of this obligation is such that if the said Charles Bent, Julianio Bent, and Alberto Silas Bent shall prosecute their appeal to effect and answer all costs if they fail to make good their plea, then the above obligation to be void ; else in full force and virtue.

CHARLES BENT.
JULIANO BENT.
ALBERTO SILAS BENT.
C. F. REMSBERG.
E. D. WIGHT.

[SEAL.]
[SEAL.]
[SEAL.]
[SEAL.]
[SEAL.]

Witness as to signatures of Charles Bent, Julianio Bent, and Alberto Silas Bent :

GEORGE W. THOMPSON.

Witness as to C. F. Remsberg and E. D. Wight's signatures :
M. R. FORBES.

Approved :

N. B. LAUGHLIN,
Judge Supreme Court, New Mexico.

Approved :

[SEAL.] GEO. L. WYLLYS,
Clerk Supreme Court, Territory of N. Mex."

Be it further remembered that afterwards, to wit, on the 30th day of November, A. D. 1895, there *was* filed in the said supreme court certain assignments of error herein in the appeal of the said appellants to the Supreme Court of the United States, and the original of which said assignments of error *are* hereto attached :

149 TERRITORY OF NEW MEXICO :

In the Supreme Court.

I, George L. Wyllys, clerk of the supreme court of the Territory of New Mexico, do hereby certify that the foregoing is a true, perfect, and correct transcript of the portions of the record of the cause therein mentioned which are therein set forth, to wit, the appeal bond, and that the paper hereunto attached is the original of the assignments of error in the appeal of the appellants in said cause to the Supreme Court of the United States, which were also filed in my office.

In witness whereof I have set my hand and the seal of said court this 30th day of December, A. D. 1895.

[Seal Supreme Court, Territory of New Mexico.]

GEO. L. WYLLYS, *Clerk.*

150 In the Supreme Court of the United States.

Appeal from the supreme court of the Territory of New Mexico.

CHARLES BENT, JULIANO BENT, ALBERTO SILAS BENT, Plaintiffs)
and Appellants,

vs.

GUADALUPE MIRANDA, JESUS G. ABREU, as Surviving Executor of the Last Will of Charles Beaubien; Luz B. Maxwell, Petra Abreu and Jesus G. Abreu, Her Husband; Juana Clothier and Joseph Clothier, Her Husband; Pablo Beaubien, Virginia Keyes and — Keyes, Her Husband; Peter Maxwell, Amelia Abreu and — Abreu, Her Husband; Sophia Ramillo, Pablito Maxwell, Odila Maxwell, Bernigna Mares and Vicente Mares, Her Husband; The Unknown Heirs of Joseph Pley, Deceased; Estefana Hicklin, Teresina Scheurick, Aloys Scheurick, Her Husband; Guadalupe Thompson, The Maxwell Land Grant & Railway Company, The Unknown Heirs of Leonora Trujillo and of Frederick Miller and Teodora Miller, His Wife; The Maxwell Land Grant Company, Cyrus W. McCormick, and James M. Walker, Defendants and Appellees. }

And the said appellants come now and say that in the record and proceedings of the supreme court of the Territory of New Mexico and in the final decree of the said supreme court manifest error hath intervened in this, to wit:

First. The decree of the supreme court of the Territory of New Mexico affirms the decree theretofore given in the district court in and for the county of Colfax, in said Territory, whereas in the decree of the said district court manifest error intervened, to the prejudice of the said appellants, and decree ought to have been given in the supreme court of the Territory of New Mexico reversing and annulling the decree so given in the district court.

151 Second. Also in this, to wit, that the facts found and declared by the supreme court of the Territory of New Mexico are not sufficient to sustain the decree given in the district court of the county of Colfax aforesaid nor the decree of affirmation thereof given in the supreme court of the Territory of New Mexico, but, on the contrary thereof, upon the facts found by the said supreme court of the Territory of New Mexico, the decree given in the district court of the said county of Colfax ought to have been reversed, annulled, and in all things held for naught.

Third. Also in this, to wit, that in and by the said record and proceedings it doth appear that by a certain final decree made and given in the district court in and for the county of Taos, in the Territory of New Mexico, on the 3rd day of June, 1865, Alfred Bent,

ancestor of the now plaintiffs and appellants, was vested with one undivided twelfth part and share in the premises named in the bill of complaint of plaintiffs in the district court of the said county of Colfax, and the decree afterwards, at the September term, 1866, given in the said district court in and for the county of Taos, assuming to vacate, annul, and set aside the final decree given on the 3rd day of June, 1865, was and is erroneous and void as against appellants, and decree ought to have been given in the district court in and for the said county of Colfax according to the prayer of the complaint of these plaintiffs in the said district court, whereas in and by the judgment and opinion of the said supreme court the final decree of June 3rd, 1865, so given in the district court of the said county of Taos, was declared to be interlocutory, and, further,

152 in and by the judgment, decree, and opinion of the supreme court of the Territory of New Mexico it is declared that the said decree entered at the September term, 1866, of the said district court in and for the county of Taos, assuming to vacate, annul, and set aside the said former decree of the district court upon the consent merely of parties, not showing or setting forth who assumed to the said court to represent or consent for the now plaintiffs and appellants in that behalf, and no evidence being heard touching the matter, was and is nevertheless effectual to vacate, annul, and set aside such former decree in favor of plaintiffs' ancestor, the said Alfred Bent.

Fourth. It appears by the record and proceedings of the said supreme court that by a certain former decree and opinion rendered and given in this same suit, in the said supreme court of the Territory of New Mexico, it was found, adjudged, decreed, and declared that by a decree given in the district court in and for the said county of Taos, on the 3rd day of June, 1865, as set forth in the bill of complaint of these plaintiffs herein, there was vested in Alfred Bent, ancestor of these plaintiffs, a legal estate in the undivided one-twelfth part in the lands in the said bill of complaint mentioned, and that the decree given in the said district court in and for the said county of Taos, at the September term, A. D. 1866, thereof, assuming and pretending to vacate and set aside such former decree in the said district court, was wholly erroneous and void; nevertheless, the said supreme court of the Territory of New Mexico, by the decree and opinion rendered and given herein, at the July term thereof last past, doth in effect find, declare, and adjudge that

153 the decree so given in the district court in and for the said county of Taos, at the September term, 1866, was effectual to vacate, annul, and set aside such prior decree of the said district court in and for the said county of Taos.

154 Wherefore, for the errors aforesaid and the manifold other error- in the said record of proceedings and in the decree of the said supreme court of the Territory of New Mexico appearing, the said Charles Bent, Alberto Silas Bent, and Julianio Bent pray that the decree of the supreme court of the Territory of New Mexico and the decree given herein in the district court in and for the county of Colfax may be reversed, annulled, and altogether held for

naught, and that plaintiffs be restored to all things which by virtue thereof they have lost, and they also pray that decree be given for their costs in this behalf expended. .

CALDWELL YEAMAN,
E. T. WELLS,
R. T. McNEAL,
JNO. G. TAYLOR,

Solicitors for Appellants and of Counsel.

[Endorsed:] Filed in my office this Nov. 30, 1895. Geo. L. Wyllys, clerk.

Endorsed on cover: Case No. 16,110. New Mexico Territory supreme court. Term No., 388. Charles Bent, Julianio Bent, & Alberto Silas Bent, appellants, *vs.* Guadalupe Miranda, Jesus G. Abreu, as surviving executor of the last will of Charles Beaubien; Luz B. Maxwell, *et al.* Filed December 9, 1895.